84-1602

No. 85-

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

JACK ANDERSON, THE INVESTIGATOR PUBLISHING CO., and BILL E. ADKINS,

Petitioners,

—against—

LIBERTY LOBBY, INC. and WILLIS A. CARTO,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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APPENDIX A

Order of the Court of Appeals

United States Court of Appeals
For the District of Columbia District

No. 83-1471 September Term, 1984

CA 81-02240

Liberty Lobby, Inc., et al., Appellants

v.

Jack Anderson, et al.

BEFORE: Edwards and Scalia, Circuit Judges and Harris, District Court Judge, U.S. District Court for the District of Columbia

O R D E R

On consideration of petitioners' petition for Rehearing, filed December 3, 1984, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

For the Court:

GEORGE A FISHER, CLERK

BY: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

APPENDIX B

Opinion Of The Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1471

LIBERTY LOBBY, INC., et al., APPELLANTS

v.

JACK ANDERSON, et al.

Appeal from the United States District Court for the District of Columbia

(Civil Action No. 81-02240)

Argued January 20, 1984

Decided November 2, 1984

Mark Lane of the Bar of the Supreme Court of New York, pro hac vice by special leave of the Court, with whom Fleming Lee was on the brief, for appellants.

Michael D. Sullivan, with whom David J. Branson and Leonard Appel were on the brief, for appellees.

Before: EDWARDS and SCALIA, Circuit Judges, and HARRIS,* District Judge of the United States District Court for the District of Columbia.

Opinion for the Court filed by Circuit Judge SCALIA.

SCALIA, Circuit Judge: Liberty Lobby, a not-for-profit corporation incorporated under the laws of the District of Columbia, and Willis Carto, its founder and treasurer, a citizen of California, brought this suit in the District Court for the District of Columbia against Bill E. Adkins, a Texas citizen, Jack Anderson, a Maryland citizen, and the Investigator Publishing Company, a corporation

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* Sitting by designation pursuant to 28 U.S.C. §292(a) (1982).

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

formed under the laws of the State of Texas.[1] Their suit, founded on diversity of citizenship, 28 U.S.C. §1332 (1982), charged that the defendants had libeled them in two articles printed in the October 1981 issue of The Investigator magazine, which was published by Jack Anderson. The District Court granted summary judgment for the defendants, Liberty Lobby, Inc. v. Anderson, 562 F. Supp. 201 (D.D.C. 1983), and the plaintiffs now appeal.[2] The appeal presents issues regarding the asserted

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[1] Two other employees of the Investigator Publishing Company were also named in the original complaint, but have since been dismissed from the suit.

[2] Anderson's counterclaim, in which he claimed that he had been defamed by Liberty Lobby, and the second count of the plaintiff's complaint, asserting a conversion of Liberty Lobby's files, were both dismissed by the District Court with no appeal taken.

doctrine of a "libel-proof" plaintiff, i.e., one whose reputation has already been so damaged that further defamation can do no harm; the assertion that a pre-publication warning of falsity given by the plaintiff establishes the malice necessary to sustain judgment on behalf of a public-figure plaintiff; application of the "clear and convincing evidence" standard and the requirement of independent judicial determination of actual malice to a motion for summary judgment; and, of course, the merits consideration (under summary judgment standards) of whether the allegations were factual (as opposed to opinion), were defamatory, were false, and were made in good-faith reliance upon reputable sources.

I

Three stories published in the October 1981 issue of The Investigator are relevant to this lawsuit. The shortest of them, "America's Neo-Nazi Underground: Did Mein Kampf Spawn Yockey's Imperium, a Book Revived by Carto's Liberty Lobby?," was written by Jack Anderson and contained four of the thirty statements identified in the complaint as defamatory. That piece was an introduction to the two other articles: "Yockey: Profile of an American Hitler," telling the story of Francis Parker Yockey, a lawyer and author who took his own life in 1960, and "The Private World of Willis Carto," the source of the remainder of the statements identified as defamatory.

The "Yockey" and "Private World" articles were written by Charles Bermant, although the former appeared under the by-line of the magazine's staff writer Jon Obert, because Anderson did not like more than one piece attributed to a single author in any issue. Bermant joined Anderson's staff in March 1981, having previously worked in Anderson's office as an intern, but the story, according to the appellants, began much earlier. In November 1969, Joseph Trento and Joseph Spear published an article in True magazine entitled "How Nazi Nut Power Has Invaded Capital Hill."3/ Carto and Liberty Lobby sued True, claiming that

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3/ At oral argument, counsel for the appellees conceded that when the True article was published, Trento and Spear worked for Jack Anderson. Jan. 20, 1984 Tr. at 33-34.

the article defamed them. The lawsuit ended with a settlement under which True paid Carto a sum of money and published a favorable article about Liberty Lobby. In May 1981, Spear was working for Anderson, now as the Managing Editor[4/] of The Investigator. He assigned Bermant to investigate the Yockey and Carto stories and, plaintiffs claim, gave him drafts containing the statements made in the True article from which to work. Appellants' Brief at 29-30. Although the affidavit that Bermant filed with the district court does not list the Trento and Spear article as a source, see Bermant Affi-

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4/ In their briefs, both sides identify Spear as the magazine's managing editor, although he was listed as an associate editor on the masthead of the October 1981 issue. Regardless of title, he was in a position of authority over Bermant, also listed on the masthead as an associate editor.

davit at ¶¶8-17, the detailed appendix to the affidavit does identify it as a source, occasionally as the sole source, for some of Bermant's claims. See, e.g., Bermant Affidavit Appendix at 16-17.

Bermant conducted other research, which the district court characterized as "exhaustive" and "thorough[]." 562 F. Supp. at 206, 209. He reviewed the products of a Freedom of Information Act request, sought information about Carto and Yockey in libraries, and interviewed a number of people. One of his major sources was Robert Eringer, a freelance journalist; several of the allegedly defamatory statements were based solely on Eringer's claims. Bermant never met Eringer and his deposition recounts only one telephone

conversation with him. Eringer sent Bermant a draft of an article containing some information about Liberty Lobby. That draft has since been lost, probably "thrown away." Bermant Deposition at 71-72. Eringer never identified any of his sources to Bermant, nor did Bermant inquire. Anderson testified that it did not matter to him whether Eringer was reliable, for "[w]e did not intend to use his material." Anderson Deposition at 51. Eringer, believed at the time of the proceedings below to live in London, was not deposed for this lawsuit. Another of Bermant's major sources was William Cox, an attorney representing a plaintiff who had sued an organization related to the appellants in the

California courts.5/ Bermant interviewed Cox and also relied on the "Declaration of William Cox Regarding the Urgency of the Proceedings," a document apparently produced for the California lawsuit.

Bermant "spent . . . several days" writing first drafts of the articles, which were then edited by Obert. Bermant Affidavit at ¶17. There is evidence that several of the allegedly defamatory statements were added to the "Private World" article during the editing process. Bermant Deposition at 119. The Investigator's art department

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5/ Cox's client, Mermelstein, sued the Institute for Historical Review, an organization associated with Carto. The Institute had offered an award of $50,000 to the first person able to prove that Hitler's mass extermination of Jews had occurred. Mermelstein claimed the prize, and the Institute allegedly refused to pay.

produced several illustrations for the issue - two of which are also subjects of defamation claims.

Before the issue was published, William McGaw, editor of The Investigator, told the magazine's president that the articles were "terrible" and "ridiculous". He also viewed the illustrations and informed the art director that they "could be libelous." McGaw Affidavit at ¶¶13, 17. Also before the issue was published, the appellants delivered written notification to the appellees of those statements they thought were defamatory, without apparent effect.

The articles, analyzed in detail in Parts IV and V of this opinion, convey the message that Carto is racist, fascist, anti-Semitic, and a

neo-Nazi, and that Liberty Lobby was established to pursue his goals. The introductory article, written by Anderson over the by-line "the Editors," stated that upon Yockey's death Carto was able "to pick up the torch and fan it into a prairie fire." His strategy "[t]o capture political power" was "to put a benign face on his operation. . . . Thus Carto called his base organization Liberty Lobby." The "Private World" article was to the same effect. It asked, for example, such rhetorical questions as whether "Carto's opinions march goosesteps beyond the pale of responsible American conservatism?"; repeated such claims of others as the assertion that Carto was "the leading anti-Semite in the country"; and, in words and illustrations,

noted that Carto physically resembled and emulated the mannerisms of Hitler.

Carto and Liberty Lobby filed suit on September 15, 1981, challenging two of the illustrations and twenty-eight statements contained in the articles, including some of the statements repeated above.

II

We turn first to arguments which both parties bring forward as a means of avoiding the difficult inquiry into the issues of falsity and malice. Appellees ask us to affirm the grant of summary judgment without further ado because the appellants are, on two theories, "libel-proof." First, they claim that the reputations of Liberty Lobby and Willis Carto have been irreparably strained by prior publica-

tions. Whether these prior publications are truthful is not relevant, they assert, because the tort of libel, which redresses injury to reputation, has no application when the plaintiff, for whatever reason, has a reputation that cannot be damaged.

We are not yet ready to adopt for the law of libel the principle that 10,000 repetitions are as good as the truth. We see nothing to be said for the rule that a conscious, malicious libel is not actionable so long as it has been preceded by earlier assertions of the same untruth. To begin with, we cannot envision how a court would go about determining that someone's reputation had already been "irreparably" damaged - i.e., that no new reader could be reached by the freshest libel.

More important, however, no significant First Amendment values would be furthered by the rule appellees suggest, since, where a person has been widely libeled by reputable sources, the defendant's good faith reliance upon those sources provides, as we shall later discuss, a complete defense. Proving such good faith reliance (or actually, even less than that, merely preventing the plaintiff from proving the opposite by "clear and convincing evidence") is not such a burden that a prophylactic rule need be adopted sanctioning willful character-assassination so long as it is conducted on a massive scale.

The appellees' second libel-proof theory is somewhat different. They claim that the unchallenged portions of

these articles attribute to the appellants characteristics so much worse than those attributed in the challenged portions, that the latter cannot conceivably do any incremental damage. This apparently equitable theory loses most of its equity when one realizes that the reason the unchallenged portions are unchallenged may not be that they are true, but only that appellants were unable to assert that they were willfully false. In any event, the theory must be rejected because it rests upon the assumption that one's reputation is a monolith, which stands or falls in its entirety. The law, however, proceeds upon the optimistic premise that there is a little bit of good in all of us - or perhaps upon the pessimistic assumption that no matter

how bad someone is, he can always be worse. It is shameful that Benedict Arnold was a traitor; but he was not a shoplifter to boot, and one should not have been able to make that charge while knowing its falsity with impunity. So also here. Even if some of the deficiencies of philosophy or practice which the appellees' articles are lawfully permitted to attribute to the appellants (which is not necessarily to say they are true) are in tact much more derogatory than the statements under challenge, the latter cannot be said to be harmless. Even the public outcast's remaining good reputation, limited in scope though it may be, is not inconsequential. ("He was a liar

and a thief, but for all that he was a good family man.")6/

None of the opinions the appellees cite - all decisions of federal courts interpreting state law in the absence of state court guidance - extend the

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6/ There may be validity to the proposition that at some point the erroneous attribution of incremental evidence of a character flaw of a particular type which is in any event amply established by the facts is not derogatory. If, for example, an individual is said to have been convicted of 35 burglaries, when the correct number is 34, it is not likely that the statement is actionable. That is so, however, not because the object of the remarks is "libel-proof," but because, since the essentially derogatory implication of the statement ("he is an habitual burglar") is correct, he has not been libeled. That issue is not presented here, both because none of the repulsive attributes which the appellees imputed to the appellants have been established or conceded to be true, and because the statements which we find to have been improperly taken from the jury impute attributes which, while less heinous than those for which the appellees have a good-faith defense, are nevertheless quite separate and distinct from them.

libel-proof doctrine as far as appellees would go. In fact, the Second Circuit, an early proponent of the doctrine, has narrowed it to the facts presented in its earlier cases. See Buckley v. Littell, 539 F.2d 882, 889 (2d Cir. 1976). Because we think it a fundamentally bad idea, we are not prepared to assume that it is the law of the District of Columbia; nor is it part of federal constitutional law.

Appellants, for their part, argue that we can dispense with inquiry into the existence of actual malice, see pages 17-25, infra, because that element of liability is automatically established (to a degree sufficient to go to the jury) by the fact that appellees proceeded with these publications despite a warning from apellants that

the articles were defamatory and a demand that they not be printed. These were allegedly contained in a letter to Jack Anderson which was "as explicit and detailed as the complaint filed in this matter," Appellants' Reply Brief at 6. It may be enough to note that that letter was not mentioned in the plaintiffs' papers in opposition to summary judgment, and is not part of the record on this appeal. Even if it were before us, however, the letter as described could not conceivably constitute, in and of itself, sufficient evidence of malice to overcome a summary judgment motion. That effect might be achieved by a prior notice citing specific, verifiable facts contradicting the allegations so directly as to cause any reasonable person to

conduct further inquiry; but mere general allegations of falsity similar to those contained in the complaint do not suffice. If the case reaches the jury, of course, such a notice can be considered as evidence of malice along with other factors - but standing alone it cannot take the case there.

III

We must address, then, whether the District Court properly granted the defendants' motion for summary judgment on the ground that all the elements of libel had not been adequately established. The nature of those elements is not in dispute, but the degree of certitude with which one of them had to be established, and the nature of the judgment that the District Court was to bring to bear upon it (i.e., indepen-

dent or deferential) will require some discussion.

Appellants do not question the District Court's ruling that they were so-called limited purpose public figures, and that the alleged libels pertained to the area in which they held this status. This means that, as a constitutional matter, in order to recover damages from these media defendants, the plaintiffs had to prove that they acted with actual malice. See, e.g., Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974). Actual malice is not simply ill will; it is the making of a statement with knowledge that it is false, or with reckless disregard of whether it is true. Id. at 328. The test is not an objective one, for the Supreme Court has noted that

> reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (emphasis added). This does not mean, of course, that actual malice cannot be proved inferentially. The plaintiff need not obtain an admission of fault from the defendant.

> Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation.

Id. at 732.

To prevail in a libel trial, not only must the public-figure plaintiff prove the existence of actual malice; he must prove it with "convincing clarity," New York Times v. Sullivan, supra, 376 U.S. at 285-86, or to use the Court's more recent language, with

"clear and convincing proof," Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974). Moreover, judges are not merely to determine whether the finder of fact could reasonably find such "convincing clarity" to exist, but are "independently [to] decide" that point, "as expositors of the Constitution." Bose Corp. v. Consumers Union, 104 S. Ct. 1949, 1965 (1984). The issue we address in this portion of our opinion is whether these requirements of "convincing clarity" and "independent judicial determination" apply at the summary judgment stage. Even though this is a diversity case, that issue is governed by federal law - either because the Constitution imposes the more demanding requirements at the summary judgment stage, or because, if it does

not, the matter is determined by the rules of the forum court under Erie R.R. v. Tompkins, 304 U.S. 64 (1938). Anchorage-Hynning & Co. v. Moringiello, 697 F.2d 356, 360 (D.C. Cir. 1983) (applying Erie to the District of Columbia); see Schultz v. Newsweek, Inc., 668 F.2d 911, 917 (6th Cir. 1982).

With regard to the "clear and convincing evidence" requirement, the issue can be framed as follows: whether, in order to deny the defendant's motion for summary judgment, the court must conclude that a reasonable jury not only could (on the basis of the facts taken in the light most favorable to the plaintiff) find the existence of actual malice, but could find that it had been established with

"convincing clarity." We conclude that the answer is no. Imposing the increased proof requirement at this stage would change the threshold summary judgment inquiry from a search for a minimum of facts supporting the plaintiff's case to an evaluation of the weight of those facts and (it would seem) of the weight of at least the defendant's uncontroverted facts as well. It would effectively force the plaintiff to try his entire case in pretrial affidavits and depositions - marshalling for the court all the facts supporting his case, and seeking to contest as many of the defendant's facts as possible. Moreover, a "clear and convincing evidence" rule at the summary judgment stage would compel the court to be more liberal in its appli-

cation of that provision of FED. R. CIV. P. 56(e) which states that the court "may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits." In other words, disposing of a summary judgment motion would rarely be the relatively quick process it is supposed to be. Finally, if summary judgment were supposed to be based on a "clear and convincing" standard, it is hard to explain the Supreme Court's statement questioning the asserted principle that in public figure libel cases "summary judgment might well be the rule rather than the exception," and affirming to the contrary that "[t]he proof of 'actual malice' . . . does not readily lend itself to summary disposition."

Hutchinson v. Proxmire, 443 U.S. 111, 120 & n.9 (1979). There is slim basis for such a statement if, in order to survive a motion for summary judgment, the plaintiff must establish an arguably "clear and convincing" case.

We believe, in short, that application of the "clear and convincing evidence" constitutional standard in public figure libel cases is similar to application of the "beyond a reasonable doubt" constitutional standard in criminal cases. There, "probable cause" is sufficient to take the case to trial, see Brown v. Department of Justice, 715 F.2d 662, 667 (D.C. Cir. 1983), and the heightened standard applies only after the government has had an opportunity to present its full case, United States v. Davis, 562 F.2d 681, 683-84 (D.C.

Cir. 1977) (on motions for acquittal, court must determine whether there is any evidence "upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt").

We realize that some other courts have expressed a different rule. See, e.g., Yiamouyiannis v. Consumers Union, 619 F.2d 932, 940 (2d Cir. 1980) ("a judge in denying a defendant's summary judgment motion must conclude that, based on the evidence asserted in the plaintiff's affidavits, 'a reasonable jury could find malice with convincing clarity,'" quoting Nader v. de Toledano, 408 A.2d 31, 50 (D.C. 1979), cert. denied, 444 U.S. 1078 (1980)). These formulations were set forth, however, with no analysis of the point here discussed. In fact, the court's

attention was directed to the question of whether the normal procedural standard governing summary judgment applied (i.e., the test "could a reasonable jury find," as opposed to some test more favorable to the defendant) rather than to the question of what burden of proof that standard should be applied to. Moreover, those courts' analyses of the facts demonstrate that they rested their decisions upon lack of evidence of malice, not upon lack of "convincing clarity" in that evidence. See Yiamouyiannis v. Consumers Union, supra, 619 F.2d at 942 ("no showing has been made that they were published with actual malice, let alone a showing that achieves 'convincing clarity'"); Nader v. de Toledano, supra, 408 A.2d at 56 ("[i]n sum, . . . we agree with the

trial court that appellant has demonstrated no genuine issue of fact as to whether Copley had reason to doubt de Toledano's veracity").

With regard to the Bose requirement of independent judicial determination we reach the same conclusion, for the same compelling practical reason: it is simply incompatible with the preliminary nature of the summary judgment inquiry. If it were to be applied at that early stage, summary judgment would be converted from a search for the minimum amount of evidence that could persuade a reasonable person into the final assessment of "actual malice" by the court itself -- final, at least, if the court concludes actual malice has not been established. That would compel the plaintiff to present his

full case prematurely, with the undesirable consequences described above. In addition, courts of appeal would be burdened with the unusual task of making the largely factual determination of actual malice in many cases where a judge or jury verdict against the plaintiff would render that unnecessary.

For the foregoing reasons, we believe that the constitutional requirements of "clear and convincing" proof and independent judicial determination of the ultimate issue of actual malice are to be applied only after the plaintiff has had an opportunity to present his evidence. We thus agree with the two-stage approach set forth by Judge Wright, joined by Judge Robinson, in his concurrence in

Wasserman v. Time, Inc., 424 F.2d 920, 922 (D.C. Cir.), cert. denied, 398 U.S. 940 (1970):

> Unless the court finds, on the basis of pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice in the Times sense, it should grant summary judgment for the defendant. . . .
>
> If the case survives the defendant's summary judgment motion, the trial court at the close of the plaintiff's case must decide whether actual malice has been shown with "convincing clarity."

One further clarification is needed: In reviewing the district court's application of the foregoing

principle, we do not defer to its conclusions and reverse only if they are clearly erroneous. Since in granting or denying summary judgment a district court by defintion makes a determination of law rather than fact, we review the matter anew. Western Casualty & Surety Co. v. National Union Fire Insurance Co., 677 F.2d 789, 791 n.1 (10th Cir. 1982).

IV

A. Nondefamatory Allegations

We proceed, then, to a discussion of the merits. Preliminarily, we can eliminate from our inquiry those statements asserted to be false in the Complaint which cannot, as a matter of law, be libelous since they do not "tend[] so to harm the reputation of another as to lower him in the estima-

tion of the community or to deter third persons from associating or dealing with him," RESTATEMENT (SECOND) OF TORTS §559 (1977). The plaintiffs' challenges to the following numbered allegations represent no more than a charge of journalistic inaccuracy, which is not an actionable fault:

3. Assertion that Liberty Lobby is tax exempt.

4. Assertion that Yockey's book Imperium is "circulated only among the elect"; that Carto's admiration for Yockey is a "secret thing"; and that Carto "hides in the shadows of reclusion and anonymity."

10. Use of word "drifting" to describe Carto's movement among various right-wing

groups. (Even if this can be thought sufficiently derogatory to be actionable, it is a characterization which would qualify as an opinion and thus be protected. See Section B below.)

12. Assertion that Liberty Lobby's magazine, The Spotlight, "boasts 335,000 readers," when in fact it had a paid circulation of 335,000.

18. Description of Jeremy Horne as a veteran employee.

B. Opinions

We can also eliminate from our consideration three other allegations, which are constitutionally protected opinion, and therefore not actionable.

In Gertz v. Robert Welch, Inc., supra, the Supreme Court stated that:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

418 U.S. at 339-40. Since opinions cannot be false, they cannot be the basis of a defamation action. While it is often difficult to draw a line between statements of fact and opinion, see, e.g., Ollman v. Evans, 713 F.2d 838 (D.C. Cir. 1983), vacated, October 6, 1983, reh'g en banc, March 6, 1984, we are of the view that the following numbered allegations quality as the latter:

7. Description of Carto as seeking to "destabilize society," and to "create[] a climate of fear and danger," in order to "seize real political power."

30. Statement that Carto's appeal to "American traditions" is inconsistent with the racial, ethnic and religious equality central to the "American idea." 7/

There are no objective criteria by which the truth or falsity of these statements can be evaluated. A proposal to eliminate what one favors in the social structure is "destabliza-

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7/ To the extent other portions of this allegation contained the imputation that Carto supported racial and religious bigotry, the good-faith defense discussed below in connection with allegation 5 was applicable, see pages 22-23, infra.

tion," and to eliminate what one opposes is "progress." One man's "climate of fear and danger" is another man's "realistic assessment of the perils that confront us." The essence of the "American idea," and what is or is not consistent with it is preeminently a matter for political (i.e., opinionated) debate rather than scientific inquiry.

In our view, all of the assertions in allegation 25 except those repeated elsewhere[8/] also qualify as opinion. Since, with regard to one of the assertions, this assessment depends heavily upon context, we set forth that allegation in full.

8/ The portions of this allegation asserting anti-Semitism and adulation of Hitler are subject to the good-faith defense. See the discussion of allegations 5 and 6, pages 22-23, infra.

"In this scrutiny of Willis Carto and what he represents, five of the characteristics John Roy Carlson said identify inherent or incipient fascism have manifested themselves in greater or lesser degree. They are; [sic] a virulant anti-Semitism to dissolve the social fabric; the pitting of group against group and race against race to weaken national unity; incessant Red-baiting to smokescreen fascist propoganda [sic]; super patriotism and a perverted brand of nationalism; and the creation of a 'survivor mentality' to further fragment society. Three other characteristics are also evident in the Carto record; the use of lies and half-

> truths to win the support of the politically ignorant; adulation of Adolf Hitler; denigration of democracy and agitation for an authoritarian New Order."

What one person may consider "the pitting of group against group" another might regard as the championing of minority rights or opposition to exorbitant and divisive minority demands. What is "Red-baiting" or "superpatriotism" or "perverted nationalism" to some may seem no more than appropriate awareness of Communist subversion and love of country to others. Whether a person is creating a "survivor mentality" or merely urging sensible immediate precautions surely depends upon one's estimation of how close the world is to the brink of disaster. Whether

democracy is being "denigrated" depends upon what elements one considers central to that political form, and except to the anarchist what is "authoritarian" is necessarily a matter of political judgment and degree. As tor "fascism": Although that word has a particular meaning in political science discourse, in the arena of political commentary we are engaged in here it has long been used to describe nothing more specific than right-of-center views of which the writer disapproves.9/ See Buckley v. Littell, 539 F.2d 882, 894 (2d Cir. 1976). We have no difficulty in demoninating all

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9/ George Orwell commented on this phenomenon in 1946: "Many political words are . . . abused. The word Fascism has now no meaning except in so far as it signifies 'something not desirable.'" G. ORWELL, Politics and the English Language, in A COLLECTION OF ESSAYS 162 (1953).

of the statements relating to these terms as statements of opinion.

The statement that Carto's record was characterized by "the use of lies and half truths" is more problematic, but we are of the view that in this context it constitutes a statement of opinion as well. The assertion that a person has "lied" in the sense of intentionally making a misrepresentation of fact is unquestionably defamatory. See 50 Am. Jur. 2d Libel and Slander §89 (1970). It seems to us, however, that when a charge of unspecified "lies and half truths" is made in the midst of a paragraph making such opinionated indictments as "fascism," "Red-baiting," "perverted nationalism," and "denigration of democracy," the reader would not be justified in believing

that the misrepresentations referred to are distortions of demonstrable fact rather than distortions of similar political assessments which the opinionated writer takes to be as unquestionable as fact - for example (to hypothesize a few that would fit in nicely with the rhetoric of this case), whether the Communist world intends to "bury us," or whether Adolph Hitler saved Europe from Communism. This interpretation is suggested not merely by the statements with which the charge of "lies and half truths" is surrounded, but also by the fact that the asserted purpose of the "lies and half truths" is to "win the support of the politically ignorant" (emphasis added), rather than "to deceive the unin-

formed." As recently stated by an Illinois court:

> The allegation that a public figure is a "liar" can be seen as a factual assertion unprotected by absolute privilege when the derogatory remark is laden with factual content, as opposed to mere name-calling.

Costello v. Capital Cities Media, Inc., 111 Ill. App. 3d 1009, ____, 445 N.E.2d 13, 18 (1982). In the present case the alternative to factual content is not name-calling, but rather political opinion - and we think it is with the latter that the remarks were laden. We emphasize it is not our holding that specific factual assertions are immunized from defamation liability by accompanying political rhetoric; but

that the politically rhetorical context of vague and ambiguous assertions (Carto uses "lies and half-truths") can determine their meaning as opinion rather than fact.

C. Allegations Unaccompanied by Evidence of Malice

As to those challenged statements that could be defamatory, and were factual, appellees' defense was based not upon truth of the assertions but upon good-faith reliance on reputable sources. It established, that unquestionably eliminates the necessary element of actual malice. Inquiry into the question, however, cannot be conducted in gross. It is the individual allegedly libelous statement (taken in its proper context) rather than the accuracy of the publication as a whole,

which is on trial. A falsehood published with actual malice is no less actionable for being surrounded by an array of well documented and carefully researched allegations. The accompanying truth cannot eliminate the libel, and is indeed the most effective means of increasing its harm by increasing its credibility. The district court appears to have acknowledged this principle, since it found that "the information contained within [Bermant's] sources substantiates each allegation contained in the articles," 562 F. Supp. at 209.

We turn first to the two remaining statements (not already disposed of as nonlibelous in our earlier discussion) contained in the introductory article. That article was written in its en-

tirety by Anderson, rather than Bermant - so that Bermant's affidavit setting forth published sources that "I relied upon" for these statements cannot be regarded as demonstrating good-faith reliance of the author. It is true that the Appendix to the Bermant affidavit states, unlike the body of the affidavit, that it sets forth the authorities upon which "defendants" (rather than "I") relied - but in view of the contradictory statement in the body of the affidavit, that is not a sufficiently clear allegation that Anderson relied upon these authorities to sustain summary judgment. Indeed, it is questionable whether the second-hand assertion of Bermant as to what was in Anderson's mind would meet the requirement of FED. R. CIV. P. 56(e)

that affidavits "be made on personal knowledge, . . . set forth such facts as would be admissible in evidence, and . . . show affirmatively that the affiant is competent to testify to the matters stated therein."

Nonetheless, in light of the manner in which, according to uncontroverted evidence, the Anderson introduction was written, we think no reasonable jury could find that Anderson personally acted with actual malice with regard to statements whose defamatory content does not go beyond statements made by Bermant in one of the last two articles. Bermant's deposition stated that "he [Anderson] was given finished drafts of both [the second and third] pieces and took certain facts and quotes out and . . .

based on or coupled with his own knowledge and his own background, wrote the introduction." Bermant Deposition at 97. Anderson's deposition (at 107) stated that in preparing the introduction "I had no independent information. I based it on the information in front of me so I was relying . . . on the reporters who work for us. . . . I took material either from the two articles or asked someone else to prepare a bridge which I disliked and then rewrote." Anderson was entitled to rely upon Bermant's research, unless he had reason to doubt Bermant's accuracy. No such reason was presented by the record here.10/

10/ Even if there was evidence indicating that Anderson knew of the True libel suit, see note 3, supra, nothing suggests that he thought Bermant was relying exclusively upon the True article
(footnote continued)

As it happens, both of the remaining defamations attributed to the Anderson article are reformulations of Bermant's allegations, some of which are challenged here and some of which are not. Both the reference to "American's neo-Nazi underground" (allegation 1) and the reference to "a more sinister neo-Nazi cabal, men of influence and cunning, lurk[ing] in the shadows" (allegation 2) find support in such assertions made by the "Private World" and "Yockey" articles as the assertion that "Carto [was] a Hitler fan" and "Liberty Lobby was 'infiltrated by Nazis who revere the memory of Hitler'" (allegation 6); and the assertion that the admirers of Yockey's

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(footnote continued from previous page) as a source for these allegations - as in fact Bermant was not.

book Imperium, among whom Carto is identified, constitute "a neo-Nazi underground," whose members "control a publishing-propaganda network stretching to the far corners of America" (unchallenged assertion). Allegations 1 and 2, therefore, are nonactionable on the basis of Anderson's actual malice. Whether they are actionable under the doctrine of respondeat superior against Anderson or any other defendant, on the basis of Bermant's actual malice, see Gertz v. Robert Welch, Inc., 680 F.2d 527, 539 n.19 (7th Cir. 1982), cert. denied, 459 U.S. 1226 (1983), depends upon the outcome of our inquiry into Bermant's good faith reliance on other sources, particularly

with regard to allegations 6 and 9, as discussed below.11/

We turn, then, to the remaining statements in Bermant's articles, to determine whether, as to each, the trial court's finding of exculpating reliance upon reputable sources was

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11/ The judgment of the District Court was based exclusively upon absence of malice on the part of any defendant. We have not been asked to consider, nor do we express any opinion upon, the principal-agent relationship among the various defendants. The precise relationship between Anderson and Bermant, for example, is unclear. Compare Anderson Deposition at 42 ("Q: Was [Bermant] . . . an employee of yours or of Jack Anderson Enterprises? A: No.") with Bermant Deposition at 9 ("Q: Who pays you for your work? In other words, who signs the checks? A: Jack Anderson.").

In the District of Columbia an employer can be held liable for torts committed by employees acting within the scope of their employment. See Jordan v. Medley, 711 F.2d 211, 213 (D.C. Cir. 1983); Smith v. District of Columbia, 399 A.2d 213, 215 n.3, 221-22 (D.C. 1979) (slander case); RESTATEMENT (SECOND) OF AGENCY §247 (1958).

correct. The plaintiffs' theory is that some of the defendants' sources were inherently unreliable, and since a jury can infer that Bermant was aware of this fact, Bermant's protestations that he had no malicious intent are insufficient to support summary judgment.12/

12/ For a discussion of the inconclusiveness of "self-serving, albeit plausible" affidavit statements regarding intent, see Stewart v. Credit Bureau, Inc., 734 F.2d 47, 54-55 (D.C. Cir. 1984). There, although the affidavit was "uncontested," we held that because the record "manifest[ed] enough possibility" that the self-serving affidavit statement was incorrect the court properly did not conclude its inquiry with the affidavit, but instead permitted the matter to be explored at trial. Likewise here, Bermant's assertion that he acted without actual malice does not end our inquiry. There is no inconsistency in our accepting, for purposes of the summary judgment decision, Bermant's self-serving statements as to the sources he relied upon. The fact that he relied upon a concededly existing source is not at all likely to be disproved by circumstantial evidence,

(footnote continued)

We find that summary judgment was proper for those statements which Bermant could show were based on reports previously published in reputable sources. Many of the claims contained in The Investigator's stories were not new. They had been made in previous articles about Carto and the Liberty Lobby. Bermant's sworn statement claimed that he relied on these published sources, and the appellants' evidence did not dispute that. Since the plaintiffs adduced nothing that would permit a jury to conclude that Bermant had reason to doubt these published sources and had therefore acted with actual malice, we think summary

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(footnote continued from previous page) whereas the fact that he believed what the source said is - for example, by evidence that many other sources which he must have been aware of said the opposite.

judgment was appropriate. The following numbered allegations are in this category.

5. Allegation that Carto is "the leading anti-Semite in the country." Many published sources, from Anti-Defamation League publications to The National Review, claimed Carto and Liberty Lobby are anti-Semitic. (The prominence of Carto in this regard - whether he is "the leading anti-Semite" - is, if derogatory apart from the anti-Semitism itself, a matter of opinion.)

6. Reference to Carto as a "Hitler fan" and assertions that Liberty Lobby was "infil-

trated by Nazis." A prior Drew Pearson publication referred to Liberty Lobby as "a nest of Nazis"; a statement by Rep. Eilberg in the Congressional Record and the Cox Declaration in the Mermelstein lawsuit described Carto's admiration of Hitler.13/

13/ Appellants assert that the unreliability of Cox and therefore the malice of Bermant follows automatically from the fact that Cox had been involved in a lawsuit against Liberty Lobby. We do not agree. It is assuredly not the case that every journalistic reliance upon the version of a story given by one of the protagonists demonstrates malice. The Cox assertions relied on here (see, in addition to the present allegation, allegations 20 and 21, infra) were directly supported by at least one other (impartial) source, and were given plausibility by allegations of neo-Nazism and anti-Semitism from many other sources.

8. Allegation of anti-Semitism. See allegation 5.

9. Neo-fascist [Yockey] as Carto's role model. Carto's introduction to Imperium adequately supports the claim that Yockey was Carto's role model, inasmuch as the defamatory content of that claim (if any) consists of the implication that Carto admired Yockey's ideas: "I was in the presence of a great force. . . . [W]e understood that I [Carto] would not desert him." The claim that Yockey was a "neo-fascist" was supported by several publications, and is in any case opinion, see page 17, supra.

16. Allegation of anti-Semitism. See allegation 5.

20. Purpose of establishing the Institute for Historical Review was to disprove Hitler's mass extermination of Jews. This was supported in substance by an article in the Long Beach Press-Telegram and by the Cox declaration filed in the Mermelstein lawsuit.

21. Details of Mermelstein-Institute for Historical Review lawsuit. This was supported by the Cox declaration filed in a lawsuit, and by a Los Angeles Times story about the controversy.

26. Attribution to Spotlight of the term "'Jew-Zionist' inter-

national bankers." The derogatory content was sufficiently supported by (1) numerous published allegations of anti-Semitism, see allegation 5, and (2) Spotlight's claim that the energy crisis was the result of "Israel in cahoots with the multinational corporations."

28. Allegation that a fine was levied against Liberty Lobby by the FEC. This was supported by an article in Spotlight.

We also find that summary judgment was proper for those statements which Bermant's affidavit asserted were based on unpublished interviews with Robert Bartell and Irving Suall, specifically the following:

22. Statement that Carto, "outraged over whistle blowing," required employees to submit to lie detector tests as a condition of employment, attributed to Robert Bartell, Chairman of Liberty Lobby's Board of Policy.

24. Statement that a plan, called "Operation Survival," was a plan to establish a dictatorship, attributed to ADL official Irving Suall.

Each of the individuals occupied a position or engaged in activities which made it reasonable to believe that he was knowledgeable concerning the matters relating to Liberty Lobby or Carto to which the attributed statement pertains. Each, moreover, was available

(and ample time was provided) for deposition by plaintiffs which could establish that the interview had not occurred, that the statement had not been made, or that the subject of the interview could not reasonably have been thought to be a reliable source. In these circumstances we do not believe that the plaintiffs' mere general assertion that these statements were false and were maliciously published suffices to overcome the good-faith defense established by Bermant's affidavit.

V

The district court was correct in entering summary judgment in favor of the appellees on the foregoing twenty-one allegations, and we affirm its findings. As to each of them, one

element of the cause of action - either defamatory content, factual nature or malice - is absent.14/ Our examination of the record, however, reveals that a jury could reasonably conclude that the nine remaining allegations were defamatory, false, and made with actual malice. As to these claims, then, we must reverse and remand to the district court. See J. MOORE & J. WICKER, 6 Pt. 2 MOORE'S FEDERAL PRACTICE ¶56.27[1] at p. 56-1560 (2d ed. 1982) (remand for limited issues in dispute proper).

14/ We have not discussed separately the contention that the juxtaposition of an article entitled "The Private World of Willis Carto" to an article about an alleged "American Hitler" (to wit, Yockey) is defamatory. In light of what we have found regarding the nonactionability of allegations regarding Carto's admiration of Hitler, see discussion of allegation 6 at page 23, supra, and also Carto's acknowledged admiration of Yockey, see discussion of allegation 4 at page 15, supra, there is no substance to this claim.

See, e.g., McBride v. Merrell Dow and Pharmaceuticals, Inc., 717 F.2d 1460 (D.C. Cir. 1983).

Allegation 11 asserts that Liberty Lobby occupies a building in Washington, D.C., owned by the Government Educational Foundation, "[t]he chairman and owner of [which] is Willis Carto, who bought the building with money contributed by many of Liberty Lobby's members in response to an urgent appeal"; and that Liberty Lobby pays the Government Educational Foundation $6,000 per month rent. The implication is that Carto is deriving personal profit from an excessive rental to Liberty Lobby. The plaintiffs deny all elements of the allegation, asserting that the building is not owned by the Government Educational Foundation, that

Carto is neither chairman nor owner of that organization, and that Liberty Lobby pays no rent for the building. The sources allegedly relied upon by Bermant (other than Eringer, whose reliability for purposes of the good-faith defense is inadequate, as we shall discuss below) do not assert ownership of the Foundation by Carto or the payment of any rent, much less a specific figure of $6,000. It is for a jury to determine the truth or falsity of these matters and whether, if false, they are defamatory. On the basis of evidence adduced at this stage, it is impossible to say that no actual malice could be found.

Allegation 15, in addition to once more characterizing Carto's movement among various right-wing groups as

"drifting" (a statement we have disposed of in the context of another allegation earlier, see page 15, supra), asserted that Carto "organized and promoted the Joint Council for Repatriation. What he meant by 'repatriation' was the forced deportation of all blacks to Africa." The published sources relied upon by defendants support the assertion that Carto created this organization, and that its purpose was to "send[] American blacks back to Africa." They do not establish, however, that the proposal envisioned "forced deportation" - in fact, to the contrary, one of them asserted that Carto (overtly at least) only sought "voluntary" repatriation. While the latter detail reduces not at all the repugnant racism of the scheme,

it is possible to be a racist without being guilty of the quite separate fault of advocating the forced deportation of United States citizens. It is the distinction between the actions of White Citizen Councils, during the worst days of the civil rights struggle, in subsidizing bus fares for blacks willing to emigrate from the South, and the action of groups such as the Klu Klux Klan in driving blacks out by physical force. As far as racism is concerned, there is no distinction between the two, but the latter contains an additional and quite distinct repugnancy. Since the published sources referred to by the defendants not only do not establish this point but to the contrary assert that Carto's scheme was formally for "voluntary"

repatriation, we think it is a jury question whether this allegation, if false, was made with actual malice.

We find that a jury could reasonably conclude that defamatory statements based wholly on the True article were made with actual malice. That article was the subject of a prior defamation action which was settled to Carto's satisfaction, a fact likely known to Bermant's editors, if not Bermant. Whether the particular statements relied on were false and whether the appellees were actually aware of that falsity are matters for a jury to determine. Allegation 19, the illustration suggesting that Carto emulated Hitler, and allegation 29, that Carto joined the singing of "Hitler's 'Horst Wessel Lied'" and delivered a speech in

an attempt to emulate Hitler's style and charisma, were based solely on the True article. There is no other evidence that Carto emulates Hitler in appearance or in action, allegations the jury could find to be defamatory.

We turn next to the five allegations based solely upon the conversation with Robert Eringer:

13. Statement that Carto "conducts his business by way of conference calls from a public telephone," which arguably suggests criminality;

14. Claim that in 1968 a Carto front organization "used a direct mail blitz to support G. Gordon Liddy's Congressional campaign in New York" (since Liddy was later con-

victed of felony in connection with political activities, the allegation could be considered defamatory);

17. Illustration showing Carto secretly observing prospective employees through a one-way mirror;

23. One-way mirror allegation, in text;

27. Claim that a lead story in an issue of The Spotlight was a total hoax.

We find that a jury could reasonably conclude that Bermant made these allegations with a disregard for their truth or falsity that constituted actual malice. For one thing, there is only Bermant's word for the fact that Eringer ever said anything that sup-

ports the statements. The same was true for the statements, discussed earlier, attributed to Bartell and Suall - but as we noted, see pages 24-25, supra, those individuals were present at known locations in this country and could have been deposed by the plaintiffs, whereas the mysterious Mr. Eringer was thought to be somewhere in England. Moreover, Bermant's dealings with Eringer display a much lesser degree of care, despite the scurrilous allegations for which he is the sole source. Bermant not only did not inquire how Eringer came to know these details of Carto's operations; he never even looked the unknown Eringer in the eye until after the story was published, but spoke to him only once over the telephone. Anderson admits that he

did not care whether Eringer was reliable. These actions came close to the hypothetical case of actual malice the Supreme Court described in St. Amant: a story "based wholly on an unverified anonymous telephone call." 390 U.S. at 732. Eringer was identified by name, but he was in all other respects unknown to the appellees. These allegations, which defendants claim were based solely on Eringer's assertions, should have gone to the jury.

* * * * *

We affirm the District Court's grant of summary judgment as to all claims of defamation except those addressed in Part V of this opinion. As to the latter, we reverse and remand for further proceedings consistent with this opinion.

So ordered.

APPENDIX C

Opinion of the District Court

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

LIBERTY LOBBY, INC., et al., Plaintiffs,

Civil Action No. 81-2240

v.

JACK ANDERSON, et al., Defendants.

MEMORANDUM OPINION

Appearances:

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Before

Barrington D. Parker
United States District Judge

Entered: March 31, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTY LOBBY, INC., et al.,	:	
Plaintiffs,	:	Civil Action
v.	:	No. 81-2240
JACK ANDERSON, et al.,	:	
Defendants.	:	

MEMORANDUM OPINION

Barrington D. Parker, District Judge:

In this action the defendants, who are engaged in the publishing business, were responsible for publishing state-

ments that the plaintiffs were neo-Nazi, fascist, anti-Semitic, and racist. The plaintiffs' complaint alleges that the statements were false and derogatory, and they seek general and punitive damages. The defendants have moved for summary judgment on the grounds that the plaintiffs are public figures, that there is no evidence of actual malice, and that the plaintiffs are libel-proof.

The parties' memoranda of law, the several affidavits, and the entire record have been considered. The Court determines as a matter of law that the defendants are entitled to summary judgment and that the libel complaint should be dismissed. The reasons for this conclusion are set out in the discussion which follows.

A second count of the complaint charges that in 1966 the defendant Jack

Anderson took possession and control of and converted to his use certain property -- files -- of the plaintiffs. This count is also subject to a motion for summary judgment. The motion is likewise granted.1/

BACKGROUND

While it is claimed that there are numerous disputed facts in this libel suit, many are of limited, if any, consequence. The material underlying facts necessary for disposition of this motion for summary judgment are uncontested and set out below.

Liberty Lobby is a not-for-profit corporation headquartered in the District of Columbia. Plaintiff Willis A. Carto is its founder, treasurer and its chief lobbyist. Liberty Lobby "is the

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1/ The motion is discussed, infra, pp. 14-15.

first citizens' lobby in the United States," with an avowed purpose to advocate and promote "patriotism, nationalism, lawfulness, protection of the national interests of the United States and the economic interests of its citizens, and strict adherence to the United States Constitution and the form of government it establishes."2/ To disseminate its views, Liberty Lobby publishes a weekly national newspaper, The Spotlight, with more than 335,000 paid subscribers and an even greater number of readers. A daily radio commentary, "This is Liberty Lobby," is carried over 460 stations, and a weekly half-hour television news show is broadcast on 30 stations.

The two articles giving rise to this libel suit were published in the

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2/ Complaint at ¶12.

October 1981 issue of The Investigator, a magazine published by defendant Investigator Publishing Company. Defendant Jack Anderson was publisher of the magazine; defendant Bill E. Adkins was the president and chief executive officer of the Investigator Publishing Company. The Investigator has since ceased publication.

The two articles, entitled "The Private World of Willis Carto" and "Yockey: Profile of an American Hitler," were authored by Charles Bermant, an employee of the defendants, and edited by Jack Anderson. The articles were introduced by a section signed by "The Editors": "Did Mein Kampf Spawn Yockey's Imperium, a Book Revived by Carto's Liberty Lobby?" The publications recount the history of Carto and Liberty Lobby, and convey statements

expressed by many organizations and individuals describing Carto and Liberty Lobby's views. Without doubt, the plaintiffs are referred to as neo-Nazi, fascist, anti-Semitic and racist. The portrayals form the basis for plaintiffs' libel complaint.

To support their motion for summary judgment, the defendants submitted the affidavit of Charles Bermant.3/ His affidavit details the investigative means he utilized in his research before writing the articles. He rebuts, point by point, each of the plaintiffs' allegations of libel, and reveals the sources he relied upon in composing each of the allegedly libelous statements. In preparing for the articles, Bermant secured more than 1000 pages of documents from the federal government

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3/ Affidavit of Charles Bermant, filed August 19, 1982.

under the Freedom of Information Act, 5 U.S.C. §552 et seq. He collected newspaper articles and press clippings published by The Washington Post, The Washington Star, The Los Angeles Times, William Buckley's National Review, True Magazine, and the Anti-Defamation League of B'nai B'rith. Statements by congressmen reported in the Congressional Record were also relied upon. Several examples from the sources uncovered by Bermant are illustrative:

> An outspoken anti-Semite who has professed an abiding admiration for Hitler and Nazi Germany and has been the moving force behind a network of Jew-hating organizations and publications over the years is also the unpublicized force behind "This is Liberty Lobby," an extremist radio program carried

five times a week by some 126 stations around the country.

His name is Willis A. Carto.

. . .

Years ago, Carto wrote to a fellow rightist, Norris Holt: "Hitler's defeat was the defeat of Europe. And America. . . . The blame must be laid at the door of the international Jews."

120 Cong. Rec. E4841 (daily ed., July 18, 1974) (remarks of Rep. Eilberg).4/

"Carto wants a nationalistic socialist dictatorship" in the United States, a former Liberty Lobby executive told a reporter.

Chandler, "'Debunkers' of Holocaust Linked to Right-Wing Extremists," Los Angeles Times, May 3, 1981.5/

4/ Id., appendix at 31.

5/ Id., appendix at 4, 32.

> "The revolutionists have seen to it," Carto wrote the racist author Earnest Sevier Cox in 1955, "that only a few Americans are concerned about the inevitable niggerfication of America." But Carto had a plan, for a "flank attack." He established, and promoted secretly the Joint Council for Repatriation--a send-'em back-to-Africa movement with an added benefit: ". . . such a movement would be the strongest blow against the power of organized Jewry that can be imagined."

Simonds, "The Strange Story of Willis Carto," National Review, September 10, 1971, at 979.6/

Bermant also relied upon information from William Cox, a California

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6/ Id., appendix at 14.

attorney, who had represented a client in litigation against the Institute for Historical Review, an organization established by Carto. Cox brought suit in connection with an offer of $50,000 made by the Institute to anyone who could prove whether the death of six million Jews in the Holocaust ever took place.

Bermant even approached Liberty Lobby and interviewed Robert M. Bartell, Chairman of Liberty Lobby's Board of Policy. He tried repeatedly to obtain an interview with Carto. Such efforts were not successful.

Another source relied upon was the book Imperium, written by Francis Parker Yockey and currently advertised and sold by Liberty Lobby. In 1960, Yockey was imprisoned on charges of passport fraud and assaulting a police officer. While in jail he committed suicide, but not

before Carto succeeded in meeting with him. Impressed by that jailhouse encounter, Carto later wrote in a 35-page introduction to Yockey's Imperium: "I knew I was in the presence of a great force, and could feel History standing beside me."7/ As understated in the complaint, Carto "has never made secret his admiration for Yockey,"8/ That admiration was for a man who, in his book Imperium, wrote:

> The Jew is a product of another Culture. . . . This basic fact kept the Jew entirely separate from the West spiritually and racially -- the West rejected his world-feeling, he rejected its. Mutual hatred and mutual persecution only strengthened the Jewish race,

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7/ Id., appendix at 10, quoting from Carto's introduction to Imperium.

8/ Complaint at ¶14(IV).

> sharpened its cunning and increased its resentment.9/
>
> Thus, the Negro in general rejects the white race, and the white race rejects the Negro. The culture barrier is also present, for the Negro is below our culture even though he has lived within its area for centuries.10/

Based on these and a number of other sources more fully quoted in Bermant's affidavit, the defendants have moved for summary judgment. They claim that Liberty Lobby and Carto are public figures who must prove, by clear and convincing evidence, actual malice on the part of the defendants. They further assert that summary judgment is

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9/ Affidavit of Bermant at ¶22, quoting Imperium at pp. 311-12.

10/ Affidavit of Bermant at ¶22, quoting Imperium at 313.

appropriate because malice is lacking as a matter of law, since Bermant reasonably relied on the fruits of his exhaustive investigation and the host of prior reports regarding Liberty Lobby and Carto.11/

The plaintiffs disagree, arguing that an issue of fact remains concerning the absence of malice, which of necessity precludes summary judgment. They point to numerous inaccuracies in Bermant's sources, and claim that many of those relied upon by him were patently unreliable. As an example, they point to a magazine article in True which Bermant utilized. That article

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11/ In addition, defendants maintain that Liberty Lobby and Carto are "libel-proof," since the challenged portions of the articles could not harm the reputations of Liberty Lobby and Carto in any way beyond the harm already caused by the remaining, unchallenged portions of the articles. See note 12, infra.

was also the subject of a libel suit, which was settled when True agreed to pay a certain sum of money and to publish a subsequent article in True written to Liberty Lobby's specifications. Despite that settlement, Bermant relied upon the initial article in True. Liberty Lobby and Carto also assert that the defendants failed to verify their sources or take appropriate measures to ascertain the truth of the material in the articles, and that some sources, such as William Cox, were obviously biased. Further, they claim that the defendants avoided publication of non-derogatory statements from other sources when such statements contradicted the negative statements contained in the articles. All of this, in plaintiffs' view, creates issues of fact with regard to the existence of malice, and merits a

denial of defendants' motion for summary judgment.

The Bermant affidavit serves as a supporting arch to the defendants' motion for summary judgment. The plaintiffs moved to strike certain parts of the affidavit and all appendices, claiming that the portions objected to failed to satisfy and measure up to the requirements of Rule 56(e), Fed. R. Civ. P. In a Memorandum Order of March 30, 1982, the motion was found to be without merit and was denied.

ANALYSIS

The Libel Claim

1. Public Figures

Defendants argue that since plaintiffs are "limited-purpose public figures," they must therefore prove actual malice by "clear and convincing proof" in order to prevail. The issue of

whether the plaintiffs are public figures presents a question of law to be decided by the Court. Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287, 1293 n.12 (D.C. Cir.), cert. denied, 449 U.S. 898 (1980).

In New York Times v. Sullivan, 376 U.S. 254 (1964), the Supreme Court held that the First and Fourteenth Amendments require a public official to prove the existence of actual malice to prevail in a libel suit. A lesser standard would negate the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." Id. at 270. In Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967), that principle was extended beyond public officials to embrace public figures, defined in either of two ways:

> [The public figure] designation may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.

Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974). The second category of public figure, the individual who "voluntarily injects himself . . . into a particular public controversy," is often referred to as a public figure for limited purposes.

> [A] person has become a public figure for limited purposes if he is attempting to have, or realistically can be expected to have, a major impact on the resolution of a specific public dispute that has foreseeable and substantial ramifications for persons beyond its immediate participants.

Waldbaum, 627 F.2d at 1292.

Defendants claim that the plaintiffs constitute "limited-purpose public figures," and therefore bear the heavy burden of proving actual malice. Plaintiffs, in a half-page argument devoid of citations, disagree. The Court agrees with the defendants, and rules that, because Liberty Lobby and Carto are "limited-purpose public figures," the burden is theirs to prove actual malice by "clear and convincing proof." Gertz,

418 U.S. at 342. Both plaintiffs have attempted to affect the resolution of public disputes having widespread ramifications. That conclusion is evident from their confessed purpose of promoting "patriotism, nationalism, lawfulness, protection of the national interests . . . and strict adherence to the United States Constitution. . . ." To effectuate those purposes, Liberty Lobby publishes a newspaper, and broadcasts its radio commentary and television news show. As its very name implies, Liberty Lobby is concerned with influencing matters of public interest. "The express purposes and the admitted activities of Liberty Lobby -- political lobbying and dissemination of information on highly controversial subjects -- render its affairs a matter of public interest." Liberty Lobby,

Inc. v. Pearson, 390 F.2d 484, 491 (D.C. Cir. 1968) (Burger, J.). As lobbyists, both Carto and Liberty Lobby are "limited-purpose public figures." See Pauling v. Globe-Democrat Publishing Co., 362 F.2d 188, 196 (8th Cir. 1966) (Blackmun, J.), cert. denied, 388 U.S. 909 (1967). The fact that Liberty Lobby is a corporation rather than a person does not warrant a different conclusion. See, e.g., Gospel Spreading Church v. Johnson Publishing Co., 454 F.2d 1050, 1051 (D.C. Cir. 1971).

2. Actual Malice

In proving actual malice, a public figure must show that the allegedly libelous statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times v. Sullivan, 376 U.S. at 279-80.

> [R]eckless conduct is not measured by whether a reasonably prudent man would have published; or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (emphasis added).

Because malice requires "that the defendant in fact entertained serious doubts," failure to check the reliability of a source is not sufficient to indicate the presence of malice, unless there was an obvious reason to doubt the source's veracity. See id. at 732. In

New York Times v. Sullivan, no malice was found, despite the fact that there were news stories in the files of the newspaper which, if checked, would have revealed the falsity of the allegedly libelous advertisement. The failure to discover those news stories constituted, at most, negligence, not malice. 376 U.S. at 287-88. "[M]ere proof of failure to investigate without more, cannot establish reckless disregard for the truth." Gertz, 419 U.S. at 332. More specifically,

> [while] verification of the facts remains an important reporting standard, a reporter, without "a high degree of awareness of their probable falsity," may rely on statements made by a single source even though they reflect only one side of the story without fear of

libel prosecution by a public official.

New York Times v. Connor, 365 F.2d 567, 576 (5th Cir. 1966).

If lack of investigation does not constitute malice, it follows a fortiori that a plaintiff cannot succeed in proving malice when the defendant has conducted a thorough investigation, and uncovered a host of articles published in a variety of widely circulated newspapers and periodicals. Even if all the statements contained in those sources proved false or one-sided, a reporter relying upon them in writing a story would not have "in fact entertained serious doubts as to the truth of his publication." "The subjective awareness of probable falsity required by St. Amants v. Thompson [sic]. . . cannot be found where, as

here, the publisher's allegations are supported by a multitude of previous reports upon which the publisher reasonably relied." Rosanova v. Playboy Enterprises, Inc., 580 F.2d 859, 862 (5th Cir. 1978). For that reason, the court in Rosanova affirmed the district court's granting of summary judgment.

Because Bermant thoroughly investigated and researched the articles, the plaintiffs cannot prove the existence of malice, and therefore defendants' motion for summary judgment should be granted. Bermant's reliance upon numerous sources -- The Washington Post, The Washington Star, The Los Angeles Times, National Review, True Magazine, the Congressional Record, Imperium, press releases of the Anti-Defamation League, as well as the several individuals interviewed -- negates a finding of malice. The Court,

in examining the affidavit of Bermant, finds that as matter of law the information contained within these sources substantiates each allegation contained in the articles. That some of the assertions in the defendants' articles may be based on one-sided sources or that isolated statements may prove false, does not create a factual issue as to malice, especially in light of defendants' finely etched effort presenting in careful detail the journalistic research underlying each statement.

This conclusion is reinforced by the reality that plaintiffs manage to attack only a small proportion of the sources that defendants relied upon. Thus, even granting the patent unreliability of the article in True Magazine (because of the earlier libel suit), or

of William Cox (because of his position as attorney representing a client who sued the Institute for Historical Research), or of any of the other contested sources, there still remains sufficient support for the assertions made in defendants' articles to negate a finding of malice. It was not for naught that the District of Columbia Circuit spoke of Liberty Lobby's reprehensible "overtones of anti-Semitism ad [sic] racism." Liberty Lobby, Inc. v. Pearson, 390 F.2d at 491 n.7.12/

12/ In view of this Opinion, the Court need not pass on defendants' contention that Carto and Liberty Lobby are "libel-proof." See, e.g., Simmons Ford, Inc. v. Consumers Union of the United States, Inc., 516 F. Supp. 742 (S.D.N.Y. 1981). Libel-proof plaintiffs are those whose reputations are so besmirched, either from uncontested portions of the allegedly libelous publication or from other events occurring prior to the challenged publication, that as a matter of law such plaintiffs would be unable to recover for further damage to reputation.

(footnote continued)

In Wasserman v. Time, Inc., 424 F.2d 920, 922 (D.C. Cir.), cert. denied, 398 U.S. 940 (1970), Judge Wright of our Circuit Court noted in a concurring opinion:

(footnote continued from previous page)

A second issue that need not be decided by this Court has to do with the proper choice of law. Both sides to this suit, in repeatedly citing Nader v. de Toledano, 408 A.2d 31 (D.C. 1979), cert. denied, 444 U.S. 1078 (1980), seem to assume that the law of the District of Columbia applies. However, at least with regard to Carto, a resident of California, it is possible that California law applies. Under Restatement 2d, Conflict of Laws §150(2), in multi-state defamation cases the applicable law is usually that of the state where plaintiff was domiciled at time of publication, if publication occurred within that state. If California law were applicable, it might severely burden Carto's ability to recover anything more than nominal damages. Under California Civil Code §48a, a plaintiff alleging libel in a newspaper may recover only special damages -- i.e., damages resulting from loss in business or occupation, but not damages arising from loss of reputation, nor punitive damages -- unless plaintiff seeks, in writing, a retraction within 20 days of publication.

> New York Times Co. v. Sullivan makes actual malice a constitutional issue to be decided in the first instance by the trial judge applying the Times test of actual knowledge or reckless disregard for the truth. . . . Unless the court finds, on the basis of pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice in the Times sense, it should grant summary judgment for the defendant. (Citations omitted.)

Because the plaintiffs are unable to prove actual malice, the defendants are entitled to summary judgment on the libel claim.

The Conversion Claim

The defendant Jack Anderson asserts that plaintiffs' claim of conversion is

time barred and that plaintiffs cannot rely on the fraudulent concealment doctrine to toll the statute of limitations. In their brief in opposition, the plaintiffs fail to make any argument to the contrary. Under Local Rule 1-9(d), the Court may thus treat Anderson's motion for summary judgment on count two as conceded.

The Anderson motion, however, has merit. The alleged conversion took place in 1966. D.C. Code §12-301(2) provides for a three-year statute of limitations. Plaintiff knew or should have known of the theft of the files since 1969, when the first article in True Magazine mentioned the theft. Carto was familiar with the contents of the article, as revealed by his filing of the subsequent libel suit against the

article's authors and publisher in 1970.13/

Based on the foregoing, the defendants' motion for summary judgment is granted as to the entire complaint. An appropriate order follows.

Entered: March 31st, 1985

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

13/ See Affidavit of Willis A. Carto in Support of Plaintiffs' Opposition to Motion for Summary Judgmert at ¶7, filed October 12, 1982.

APPENDIX D

AFFIDAVIT OF CHARLES BERMANT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTY LOBBY, INC., WILLIS A. CARTO,	:	
Plaintiffs,	:	Civil Action No.
vs.	:	81-2240
JACK ANDERSON, THE INVESTIGATOR PUBLISHING COMPANY, BILL E. ADKINS, WILLIAM C. McGAW, and JAY J. ARMES,	:	Judge Parker
Defendants.	:	

District of Columbia) ss.:

AFFIDAVIT OF CHARLES BERMANT

1. My place of residence is 5415 Connecticut Avenue, N.W., Washington,

D.C. I am a reporter for Jack Anderson Enterprises and was Associate Editor for Investigative Reporter (Investigator) magazine. The Investigator has ceased publication.

BACKGROUND AND EXPERIENCE

2. I graduated from Boston University, School of Public Communication, in May 1977 with a degree in Journalism.

3. While in college I contributed articles to the college newspaper and I also freelanced articles to The Washington Post, The Albuquerque Journal, Sounds Magazine and other publications.

4. In October, 1977 I began employment as a General Assignment Reporter/Photographer on The Rio Grande Sun in Espanola, New Mexico. I worked there as a reported for one year.

5. In October, 1978, I was hired as a reporter and special sections editor at the Carlsbad Current-Argus in Carlsbad, New Mexico. I worked on that paper for one year.

6. From October 1979 to November 1980 I worked as a freelance writer in Phoenix, Arizona and Albuquerque, New Mexico.

7. I joined Jack Anderson's staff as an intern in November 1980 and was promoted to full staff in March 1981. I was assigned editorial duties for the new magazine and for the daily column.

THE CARTO/YOCKEY STORIES

8. In early May, 1981, The Investigator's Managing Editor, Joe Spear, gave me a copy of Yockey's "Imperium" and said that Yockey and Carto would be the subject of articles in the magazine.

He said that I would be assigned to work on the story.

9. The first step I took on this story was to file FOIA requests about Yockey with several government agencies. I began gathering published material about Willis Carto, Liberty Lobby and F. P. Yockey. In doing this, I visited the the D.C. Public Library, the Library of Congress, the library of The Washington Post, our own office files, and other places in Washington. I also received materials from the San Francisco Chronicle.

10. I received the FOIA information about F. P. Yockey, some 1,200 pages of documents and newspaper clippings. I pored over them and the other documentary material I gathered. I then began to interview people, some over the

telephone and some in person. I interviewed, inter alia, Helmuth Krave, Joseph Karesh, William P. Clancey, Charles Rauderbaugh and Denne Pettitclerc. I also contacted Wes McCune, Liberty Bell, a West Virginia based magazine, Thomas Francis, personnel at the Anti-Defamation League, Congressman Hansen and the Federal Election Commission.

11. I worked on these stories for most of five weeks. The materials I gathered and studied fill a box and these materials were produced to Liberty Lobby's counsel in this litigation for review. I also read Willis Carto's introduction to Imperium and I read much of Imperium's 615 turgid pages.

12. During the early period of preparing to put out The Investigator,

we received many inquiries from free-lance journalists. One such freelancer was Robert Eringer. Eringer indicated he had several story ideas, one of them a story about Liberty Lobby printed in a recent Mother Jones. I informed him that we were interested in exclusive material and I was at work on my own story on Liberty Lobby. He said he would send in that story, along with three others. Robert Eringer's material arrived in early June. Along with his manuscript, he enclosed a book he had written on the Trilateral Commission.

13. I arranged an interview with Bob Bartell of Liberty Lobby for June 11, 1981 at 3 p.m. I arrived early for the scheduled interview accompanied by Susan Hamburg, an acquaintence who is also an amateur photographer. Bartell

received us in his office at 300 Independence Avenue, S.E. and we talked for approximately 90 minutes. Before leaving Bartell's office, I requested an interview with Carto. Bartell said that he thought it could be arranged and that I should call him the following week. I did so three times. Only one of those times did I actually get through to Bartell. He said he would "get back to me." The following two times my calls were not returned.

14. On Friday, June 12, I began taking all of my notes and material and shaping them into a first draft. Most of the work completed that day was on the Yockey piece.

15. On June 15 or 16, the office received a call from William Cox, a California attorney, who said he had

material on Carto and Liberty Lobby. I called Cox in California. He said he would be in Washington June 21 and we made arrangements to meet in the Hyatt Regency.

16. I met Cox that day at 1 p.m. He supplied me with many court documents and told me about his case against the Institute for Historical Review where he represented Mel Mermelstien. This was the case in California where a judge took judicial notice that the Holocaust occurred, a fact disputed by the Institute. He told me about his background, which included several years in police work and Justice Department policy-making.

17. I spent the next several days writing first drafts of both the Carto and Yockey pieces. These were submitted

to Jack Anderson for review and John Obert for rewrite.

18. Obert, and later Anderson, made several editorial changes in my work. It is standard procedure in Anderson's office to have three or four hands edit an article before it is finally published. Anderson and Obert had been covering Carto for years.

19. I met Cox again in the Hyatt on Sunday, July 19. He brought me up to date about his case and said his research about Carto and his practices was extensive. I showed him parts of the manuscript for fact-checking purposes. He assured me that the story was factually sound. Said he: "I think you have captured the essence of Carto in your piece."

20. I believed at the time and still believe that the articles I have written about Willis Carto and F. P. Yockey published in The Investigator were truthful and accurate reports.

21. I have prepared an appendix to this affidavit which lists the sources for the statements in the articles plaintiff's complain about. The appendix is forty-three (43) pages long and details the sources I relied upon. These sources are patently reliable. The ADL, William Buckley's National Review, congressmen, The Washington Post, The Washington Star, True, The Los Angeles Times and others have consistently and continuously reported that plaintiffs are anti-semitic, fascist and racist.

22. Reading Imperium is one way to see why all of the sources I investigated hold the same belief about plaintiffs. Imperium contains these words:

> "The Jew is a product of another Culture . . . This basic fact kept the Jew entirely separate from the West spiritually and racially -- the West rejected his worldfeeling, he rejected its. Mutual hatred and mutual persecution only strenghened the Jewish race, sharpened its cunning and increased its resentment." (Imperium, p. 311-12)

On race, Imperium has this to say:

> "Thus the Negro in general rejects the white race, and the white race rejects the Negro. The Culture barrier is also present, for the Negro is below our Culture even

though he has lived within its area for centuries." (Imperium, p. 313)

On political power, Imperium has this to say:

> "And although our job is to rebuild we must not lose sight of the reality, for we cannot rebuild until we have captured (emphasis is Carto's). Political power is the essential criterion . . . and to the goal of political power all else must be temporarily sacrificed. To say less is to insure defeat." (Imperium, Carto's introduction, p. XIX).

/s/ Charles Bermant
Charles Bermant

Subscribed and sworn to
before me this 19th day
of August, 1982

/s/ (illegible)
Notary Public

APPENDIX TO AFFIDAVIT OF CHARLES BERMANT

Sources Relied Upon by Defendants With Respect to Plaintiffs' Allegations of Defamation

Set forth below defendants list each sentence from the article which plaintiffs' complaint alleges is false and defamatory. The plaintiffs' numbering system is followed, I through XXX. Immediately following plaintiffs' claim of falsity, defendants set forth the sources relied upon for each such sentence.

Complaint, Paragraph 14,

(I): "America's Neo-Nazi Underground."

Plaintiffs allege this title to be false and defamatory.

Defendants relied upon, inter alia, the following sources in formulating that title:

> [F]or some time an organization whose leadership espouses great sympathy for Hitlerian Nazism, has been proselytizing a vicious and clandestine brand of anti-Semitism on 126 radio stations across the Nation. This organization, the Liberty Lobby . . . .

120 Cong. Rec. E. 4841 (daily ed.), Thursday July 18, 1974 (remarks od Rep. Eilberg) (reprinted, permanent ed. HR 24201, July 18, 1974).

> [T]he real insiders in Carto's apparatus belong to an explicitly Nazi group called the Francis Parker Yockey Movement . . . . [T]he Movement amounts to an under-

> ground which controls [Carto's] . . . other fronts and whose members flaunt swastikas, sing Nazi songs and quote Nazi slogans.

Trento and Spear, "How Nazi Nut Power Has Invaded Capitol Hill," True magazine, November 1969, at p. 35 (emphasis added).

> Carto has taken his philosophy as well as the name of his underground from Francis Parker Yockey . . . patron saint of America's Neo-Nazi's . . . ."

Id. at 37. (Emphasis added).

> Liberty Lobby is, in actuality, a front for Willis Carto's Neo-Nazi activities.

Id. at 39.

> The most powerful front [for Nazi activities] of all, Liberty Lobby . . . .

Id. at 122.

> The National Youth Alliance is now under the complete control of Carto and the Neo-Nazi Francis Parker Yockey Movement.

Id. at 124.

> [Carto] has, in Liberty Lobby, the nucleus for the American Reich.

Id.

> Carto "has begun, as Hitler did, with the establishment of an organization [Liberty Lobby] that preaches national unity but practices divisiveness and hate.

Mermelstein v. Institute For Historical Review, Declaration of William Cox

[plaintiff's attorney] Regarding Urgency of Proceedings, Aug. 10, 1981, at 25.

> Nazism, like Carto himself, does not show its face, and hopes not to until it can show its fist.

Mermelstein v. Institute For Historical Review, Declaration of William Cox, supra, at 2.

> The money trees of which Willis Allison Carto is the creator and proprietor constitute a deep but not impenetrable forest, at the center of which is the tangled underbrush of a secret American Nazism.

Id.

> Yockey suggested, also like Carto, that with a new hero, a Hitler reborn, an American majority can be

> forged to triumph where Hitler failed.

Id. at 9.

> At a party given in his [Carto's] honor by the 'Francis Parker Yockey Movement,' guests wore Nazi insignia, sang the 'Horst Wessel Lied' . . . .

Id. at 11.

> . . . crypto-Nazis of Carto's immediate circle.

Id. at 14.

> the first Nazis, the men Willis Carto admires most.

Id. at 16.

> Willis Carto leads organized anti-Semitism in the United States. His dream is to succeed the Fuehrer as savior of the 'Aryan race' in America and Europe.

Id. at 25.

Jeremy Horne joined Liberty Lobby as Research Director and was rapidly promoted to Corresponding Secretary and Circulation Manager for its publications; he found letters revealing Nazi, anti-Semitic, and racist leanings of Carto. Trento & Spear, supra, at 39.

> 'Hitler's defeat was the defeat of Europe. And America.'

Id. at 121 (quoting from Carto letter).

Willis Carto was a dedicated Nazi. Id. at 121.

> Many of [Carto's right-wing groups were] . . . fronts for his Nazi activities. The more extreme front members were introduced to Nazism . . . .

Id. at 122.

Carto is 'neo-Nazi.'

Id.

On January 25, 1969, at a National Youth Alliance (NYA) meeting in Monroeville, PA, which Carto attended, Nazi trappings were displayed and "Horst Wessel Lied" was sung. Id. at 124. In the words of one observer, "Carto tried to emulate the personal habits that Hitler had become famous for. . . . To his attentive listeners, he was Hitler reincarnated." Id.

> At one NYA organizational party in honor of Carto, Nazi emblems were openly displayed and Hitler's Horst Wessel was sung by the guests.

Remarks of Rep. Eilberg, supra., at E 4841.

> Years ago, Carto wrote to a fellow rightist, Norris Holt: 'Hitler's defeat was the defeat of Europe.

> And America . . . The blame must be laid at the door of the International Jews.'

Id.

> "Horst Wessel Lied" sung after buffet supper on January 25, 1969. (Horst Wessel is a Hitlerian/Nazi song.)

Simonds, "The Strange Story of Willis Carto," National Review, September 10, 1971, at 986.

> Willis Carto is a known admirer of Adolf Hitler.

Brin, "Propragandists Libel Holocaust at UCLA," Orange County Jewish Heritage, March 13, 1981.

> 'Carto wants a nationalist socialist dictatorship' in the 'United States, a former Liberty Lobby executive told a reporter.

Chandler, "Debunkers, 'Of Holocaust linked to Right-Wing Extremists,'" "Los Angeles Times," May 3, 1981.

(II): "But a more sinister neo-Nazi cabal, men of influence and cunning, lurk in the shadows."

Plaintiffs allege this statement to be false and defamatory.

See material cited above in response to plaintiff's paragraph (I), all of which applies here.

(III): "Thus Carto called his base organization the Liberty Lobby and even obtained tax exempt status for it."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon materials supplied by Robert Eringer that Liberty Lobby is a tax-exempt organization. [Defendants note that Liberty Lobby's

Answers to Interrogatories admit that it pays no federal taxes.]

(IV): "The book Imperium, meanwhile, is circulated only among the elect. The admiration for Francis Parker Yockey is also a secret thing, and Willis Allison Carto hides in the shadows of reclusion and anonymity."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the following in making the above statement:

Imperium is obtainable through Liberty Lobby and other outlets of the Carto organization. Advertisements appear in The Spotlight and its readership is precisely that limited, homogeneous remnant -- or elect -- which Carto seeks to call to his cause.

Carto wrote a 35 page introduction to the second printing of Yockey's Imperium in which he called that racist and blatantly anti-Semitic work, "Prophetic; the work of an intuitive seer." Mermelstein the Institute For Historical Review, Declaration of William Cox, at 9.

> Carto has taken his philosophy as well as the name of his underground from Francis Parker Yockey . . . patron saint of America's Neo-Nazis . . . . Carto was strongly influenced by Yockey . . .

Trento & Spear, supra, at 37.

> A small and dedicated Far-Rightist Cult has sprung up about the figure of Yockey since his death, with Carto at its center and Imperium as its holy book.

"Facts," Anti-Defamation League of B'nai B'rith, July 1968, (Volume 18, No. 2), at 464.

> [B]ehind the scenes, and often far away (Los Angeles,) there is a more elusive figure -- with a passion for anonymity -- who is the real boss of Liberty Lobby . . . . Carto . . . .

Id. at 459.

> Liberty Lobby's "founder and silent leader is Willis A. Carto.

Id.

> Carto has . . . made a policy to keep his name far in the background, or missing entirely, when Liberty Lobby is concerned . . . .

Id.

> Carto was "living like a recluse in the basement of the Liberty Building . . . .

Simonds, supra, at 990.

> Nazism, like Carto himself, does not show its face, and hopes not to until it can show its fist.

Mermelstein v. Institute For Historical Review, Declaration of William Cox, supra, at 2.

In "Power Base For Hard Right, Willis Carto: Liberty Lobby's Unseen Boss," Washington Post, May 16, 1977, Carto is called "reclusive," (p. A-1), and is said to operate in Liberty Lobby's "background," (A-2).

(V): "Why does the Anti-Defamation League believe Carto's 'outreach makes him the leading anti-Semite in the country'?"

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon a statement made in an interview by Irwin Suall. Publications by the ADL verify this statement:

> Charges by the ADL, . . . accused Carto of setting up Liberty Lobby as a 'front' for his seamier operations, including Liberty & Property, a clearinghouse for keeping informed on anti-Semitic activities; 'Western Destiny,' a magazine with racist, Nazi-type articles and 'Noontide Press,' publisher of anti-Semitic, racist and pro-Nazi books, including 'Imperium,' by the late Nazi apologist Francis P. Yockey. The Yockey book contains a dedication to Adolf Hitler and a

laudatory 35-page introduction by Carto.

Press release, ADL of B'nai B'rith, pp. 1-3.

The Spotlight, Liberty Lobby's principal newspaper, disseminates an array of racist, anti-Semitic propaganda reflecting the prejudices of its publisher, Liberty Lobby, a Washington-based far-right extremist organization. It is this effort to camouflage the true bigotry of its pages and to deceive its readers that make The Spotlight more insidious than other publications of its kind -- and distinguishes it from the crudes, more blatant hate sheets of the neo-Nazi organizations and Ku Klux Klan groups plaguing the American scene.

> Liberty Lobby, headed by Willis A. Carto, a long-time anti-Semite and its founder and treasurer. . . .

Press release, Gans, "Spotlight on Hate," June 20, 1980, ADL of B'nai B'rith.

The ADL's "Facts," (vol. 18, No. 2) (July, 1968) stated:

> Willis A. Carto was the organizer and is still the main moving force behind [Liberty Lobby's] myriad activities. Carto . . . has also maintained significant ties with the demi-world of anti-Semitic propagandists in America.

"Facts" supra, at 459.

> "Zionism" has long been the operational euphemism for Judaism, and "Zionists" for Jewry, in the vocabulary of many anti-Semites.

> And while the Liberty Lobby stated clearly that Zionism is not a religious movement, its attack was aimed generally at America's Jews.

Id. at 463.

(VI): "And why did the late Drew Pearson describe Carto as a 'Hitler fan' and claim Liberty Lobby was 'infiltrated by Nazis who revere the memory of Hitler?'"

Plaintiffs allege this statement to be false and defamatory.

Defendants relied, inter alia, upon the following in making the above statement:

> While the nation has been preoccupied with the communist menace, a nest of Nazis has infiltrated Washington. . . . The ringleader is Willis Carto.

"Pearson-Anderson Special Weeklies," Release Monday, April 21, 1969.

> Liberty Lobby is an "organization of the fascist right, while Carto, founder of the Liberty Lobby, is the big wheel in the neo-Nazi movement.

"MGR [Drew Pearson's 'Merry Go Round'] For Rel[ease] Monday, June 9, 1969.

(VII): "Everything he does seeks to destabilize society. His panic mailings, survivor-group propaganda approach creates a climate of fear and danger. And it is only within such climate he will be able to seize the real political power he seeks."

Plaintiffs allege this statement to be false and defamatory.

Page 23 of the Bermant article on Carto attributes the allegedly offensive

phrase to "an attorney who has dealt with [Carto] in court." The attorney who so described Carto and his activities is William Cox, attorney for Holocaust survivor Melvin Mermelstein.

(VIII): "Why does Scott Stanley, the managing editor of the John Birch Society's American Opinion, say, 'In my opinion, the preservation of anti-Semitism as a movement has occurred because of the activities of Willis Carto?'"

Plaintiffs allege this statement to be false and defamatory.

Defendants relied on Robert Eringer's information concerning Stanley's statement and the above materials regarding anti-Semitism.

(IX): "Last, but perhaps most pertinent why did Willis Carto choose a

neo-fascist to be his inspiration and role-model?"

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon Yockey's Imperium and on Carto's introduction to that book, inter alia, to establish that Carto admires and reveres the memory of Yockey. It is abundantly evident from the sources quoted above and from Imperium that Yockey was a "neo-fascist." It is also clear that Carto saw Yockey as an inspiration and role-model. The following is from Carto's introduction to Imperium:

> Dimly, I could make out the form of this man [Yockey] this strange and lonely man. . . . I knew that I was in the presence of a great

force, and I could feel History standing aside me.

* * *

Twice, I attended the [Yockey] hearings, and each time was fascinated by this man, Yockey. . . . As his [Yockey's] gaze swept across, and then to me, he stopped and for the space of a fractional second, spoke to me with his eyes. In that instant we understood that I would not desert him.

* * *

Is America a free country when a sensitive genius [Yockey] can be held in the filthiest of jails with Negro and White criminals . . . a sincere patriot like Francis Parker Yockey, whose every thought and

effort was in behalf of his fellow man?

(X): "After drifting from one right-wing group to another, he decided to organize 'A lobby for patriotism' he would call Liberty Lobby."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied, inter alia, upon the following in making the above statement:

> After serving as a debt collector for the Household Finance Corporation during the mid 1950s, Carto was or became, a director of the "Libertarian Congress of Freedom", executive secretary of "Liberty and Property," (an anti-Semitic group), and formed the "Joint Council for

> Repatriation") (for the deportation of American Blacks to Africa).

Mermelstein v. Institute for Historical Review, Declaration of William Cox, at 4-5.

> By 1962, Carto 'had become' involved in over thirty right-wing groups, 'many of them fronts for his Nazi activities.'

Trento & Spear supra, at 122.

Carto's movement to and from these various groups and activities is described by the verb "drift". Webster's New World Dictionary (2d Coll. ed., 1980), defines the verb "to drift" as "1. to be carried along by or as by a current 2. to be carried along by circumstances . . . ." It was and is defendants' conclusion that use of the verb "to drift" fairly and accurately

describe Carto's movement from one ultra-right group to another during the period in question.

(XI): "About this time, Carto moved his operations into a rented thirty-room Edwardian building on the corner of Independence Avenue and Third Street in Washington, D.C. The building now is owned by the Government Educational Foundation, which charges Liberty Lobby $6,000 a month rent. The Chairman and owner of the Foundation is Willis Carto . . . ."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon information supplied by Robert Eringer and upon the following:

> GEF [Government Educational Foundation] is Liberty Lobby's landlord .

> . . it owns the building in which the lobby is housed.

"Power Base For Hard Right, Willis Carto: Liberty Lobby's Unseen Boss," Washington Post, May 16, 1977 p. A-2.

> Purchaser in 1965 and sole owner since 1969 of Liberty Lobby's building at Third Street and Independence Avenue is the Government Education Foundation (GEF). Carto signed as Chairman of GEF when GEF purchased the Liberty Lobby building.

Simonds, supra, at 988.

(XII): ". . . The Spotlight, which today boasts 335,000 readers . . . ."

Plaintiffs allege this statement to be false and defamatory.

Plaintiffs own publication, The Spotlight, stated in its January 5 & 12

[sic], 1981 edition, that Spotlight has a "grand total of 345,000" subscribers. ("In 1980 You Got The News the Establishment Tried to Hide.")

(XIII): "He . . . conducts his business by way of conference calls from a public telephone . . . . "

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon information provided by Robert Eringer.

(XIV): "In 1968, another Carto 'front' organization called United Republicans for America used a direct mail blitz to support G. Gordon Liddy's Congressional campaign in New York."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon information supplied by Robert Eringer for the

content of their statements concerning Carto's activity in Liddy's 1968 campaign, and upon the statement of William Cox:

> A sub-group of Liberty Lobby and a part of the Carto empire is 'United Republicans of America (which is not a Republican Party organization but is, rather, aimed at a takeover of the Republican Party).'

Mermelstein v. Institute for Historical Review, Declaration of William Cox, supra, at 2.

(XV): "In the mid-50's when Carto was drifting from one right wing organization to another he . . . organized and promoted the Joint Council for Repatriation. What he meant by 'repatriation' was the forced deportation of all blacks to Africa."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the following in making the above statement:

> Liberty Lobby's 'Public Policy Proposals include schemes for sending American blacks back to Africa. "The Liberty Lobbyist," Editorial, Washington Star, April 24, 1981,

> Carto tried to launch the "voluntary" repatriation of blacks to Africa. "Power Base for Hard Right, Willis Carto: Liberty Lobby's Unseen Boss," Washington Post, May 16, 1977.

The National Review had this to say about Carto's racial attitudes and prejudices:

> Carto expressed his views on racial purity more frankly in private correspondence:

The danger of "racial mongrelization" was not a new preoccupation for Carto. All through the years with Liberty and Property, he corresponded tirelessly with segregationist leaders. In 1956, in a letter to Judge Tom P. Brady of the Mississippi Supreme Court, an originator of the White Citizens' Council, Carto proclaimed: "THE ISSUE IS NOT IDEOLOGICAL. THE ISSUE IS ETHNOLOGICAL."

"The revolutionists have seen to it," Carto wrote the racist author Earnest Sevier Cox in 1955, "that only a few Americans are concerned about the inevitable niggerfication of America." But Carto had a plan, for a "flank attack." He established, and promoted secretly the

Joint Council for Repatriation -- a send-'em-back-to-Africa movement with an added benefit: ". . . such a movement would be the strongest blow against the power of organized Jewry that can be imagined."

Carto always had his eye on Jewry. From a letter to one Norris Holt:

> There are 600 million Chinese and about 200 million Russians. All united in a determination to destroy the West. And we have been so misled that we live in a dream world -- far away from reality. Hitler's defeat was the defeat of Europe. And America. How could we have been so blind? The blame, it

> seems, must be laid at the door of the international Jews. It was their propaganda, lies and demands which blinded the West as to what Germany was doing.

Carto put it all more succinctly in a memo to himself:

> Who is using who? Who is calling the shots? History supplies the answer to this. History tells us plainly who our Enemy is. Our Enemy today is the same Enemy of 50 years ago and before -- and that was before Communism. The Communists are "using" the Jews we are told . . . who was "using" the Jews fifty years ago -- one hundred or one thousand

> years ago. History supplies the answer. The Jews came first and remain Public Enemy No. 1.

The indefatigable Willis Carto had yet another project cooking in the late Fifties. In January 1957 he wrote to Judge Brady:

> Now Judge, I do not think that I have ever mentioned to you that for over a year I have been working on something tentatively called the LIBERTY LOBBY. Briefly, this involves the establishment of an office in Washington to lobby for patriotism. . . . you can readily see the tremendous importance to the Repatriation scheme if this LOBBY ever gest

> [sic] set up. On the other hand, you can see that there must never be an obvious connection between the two, for if there is, either would kill the other off, or at least harm it very gravely. Therefore, I have had to make a decision and it is that the logical thing to do is to become publically [sic] identified with the LOBBY only. . . .

In the mailing to seven hundred conservatives, Carto outlined his plan for a "pressure group for patriotism," and sought to raise $75,000. By January 1958 only $15,000 had been raised; however, Liberty Lobby set up a "research

> department" July 4, in the offices of the American Council of Christian Laymen.

Simonds, supra, at 979

In a letter to Holt, ["an extreme right-wing leader in Sausalito, California"], Carto wrote:

> Please don't do anything to publicize the JCR [Joint Council for Repatriation of Negroes Back to Africa] yet. I want to keep it as quiet as possible until we get a good, strong group behind us. To come out prematurely might mean immediate smears and destruction by the J's. If there are some stong men behind us, they won't be able to do that. . . .

(XVI): "And Birch Society editor Scott Stanley notes that 'Whenever you

find anti-Semitic litature coming from some little fly-by-night front, it seems to be associated with the Carto network.'"

Plaintiffs allege this statement to be false and defamatory.

Defendants relied on the quote supplied by Robert Eringer and the above materials relating to anti-Semitism.

(XVII): Illustration: "Carto often observes interviews of prospective employees through a mirror."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied on information supplied them by Robert Eringer.

(XVIII): ". . . Jeremy Horne, a veteran member of the Liberty Lobby staff."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the following in formulating the above description:

> Had it not been for a conscientious conservative named Jeremy Horne, Carto might still be regarded as just another right-wing extremist. Horne joined Liberty Lobby as a research director in April, 1966. Within months, he worked his way up to corresponding secretary and circulation manager for its numerous publications. He heard rumors around Liberty Lobby headquarters that Carto wasn't the legitimate conservative he tried to appear.

Trento and Spear, supra, at 39.

> Horne subsequently found racist and antiSemitic correspondence between Carto and other Liberty Lobby insiders. Horne turned over that information to the FBI and to columnists Drew Pearson and Jack Anderson. It is implied and not stated in the quoted source material that Horne left shortly thereafter.

Id. at 39 and 121.

(XIX): "Illustration depicting a man bearing a strong resemblance to Adolf Hitler, with Hitlerian moustache and right hand raised in the unmistakable suggestion of a Nazi salute, captioned "Carto, whose speeches were once a staple of ultra-right gatherings, no longer speaks in public." (Quoted from Complaint.)

Plaintiffs allege this illustration to be false and defamatory.

The illustration does not show a man making a Nazi salute. It was based on an actual photograph of Willis Carto. But even if plaintiffs believe it is their version of a Nazi salute, defendants have reliable grounds for believing Carto would give a Nazi salute.

> An observer at the National Youth Alliance meeting in Monroeville, Pennsylvania on January 25, 1969 stated, 'Carto tried to emulate the personal habits Hitler had become famous for . . . . [T]o his attentive listeners he was Hitler reincarnated.'

Trento and Spear, supra, at 124.

(XX): "Even more to the point, why would a man who says he is not anti-

Semitic establish something called the Institute for Historical Review? The Institute, an integral part of Carto's West Coast operation, was set up to disprove that any Jews died in World War II gas chambers."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied, inter alia, upon the following in making the above statements:

> [A]s a fund-raising bulletin issued by the Institute says, 'the main focus' of the organization's 'research and education program has been the debunking of the so-called "Holocaust" . . . .'

Mermelstein v. Institute for Historical Review, Declaration of William Cox, supra, at 3.

> The Institute for Historical Review has one mission: To persuade the world that Hitler did not and the Nazis did not carry out a systematic extermination of Jews.

"Holocaust is surely real, but the $50,000 may not be," Long Beach Press-Telegram, p. B-10.

(XXI): "After consulting with attorney William Cox, Mermelstein filed an application with the Institute within a few weeks. But 'Brandon' stalled, saying the Institute would first examine an application from famed Nazi hunter Simon Wiesenthal. Subsequently Wiesenthal withdrew his claim, and Mermelstein waited to testify. Instead, he was told that the Institute would not take up his claim until 'later.' Angered at being put off for so long a

time after having been threatened to respond immediately or suffer the consequences, Mermelstein and Cox filed a million-dollar suit against the organization, saying they would prove in court the the Holocaust was fact, not hoax."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the following in making the above statement:

The Los Angeles Times contained the following commentary relevant to plaintiffs' paragraph XXI in its Sunday, May 3, 1981 edition:

> The director of the Institute for Historical Review [David McCalden, aka Lewis Brandon] has quit, admitting that he has concealed his true identity. And he says that a $50,000 reward the

Institute offered was a publicity gimmick.

* * *

Brandon and his institute did not get much public attention until he offered a $50,000 reward to anyone who could prove that at least one Jew was gassed to death at Auschwitz, the death camp in Poland.

Two persons accepted the challenge and the Institute for Historical Review (IHR) has been re[ceiving] wide publicity as well as outrage from Jews around the world.

* * *

One of the two who accepted the reward challenge is Melvin Mermelstein, 54, a Long Beach busi-

nessman, who presented Brandon with an affidavit of his experiences at the Auschwitz and Birkenau camps in 1944.

* * *

On Feb. 19, Mermelstein sued Brandon, the IHR and a web of other persons and organizations tied to the institute. Mermelstein claims Brandon reneged on the reward offer.

Brandon, meanwhile, recently admitted to The Times and to subscribers that his real name is William David McCalden and that the reward was a gimmick to gain publicity for the institute's causes.

* * *

. . . McCalden told The Times that the IHR has ties to Liberty Lobby, a Washington, D.C.-based group that publishes allegedly racist materials.

Liberty Lobby is headed by Willis A. Carto. . . .

* * *

McCalden said he and Carto were involved in founding IHR here in the winter of 1978.

* * *

As director of the IHR, [Brandon]. . . earned $22,000. He acknowledged that Willis Carto is treasurer of Liberty Lobby and that Carto's wife Elisabeth who is German-born is treasurer of the Legion for the Survival of Freedom, the holding corporation for both

the institute and the publishing arm of the Carto operations known as Noontide Press.

* * *

. . . close connection between the Cartos and the institute. . . .

* * *

The IHR operated out of its Torrance warehouse and office without fanfare until this February, when Mermelstein filed his suit asking $17 million in damages for "injurious denial of established fact." The suit alleges that the institute breached a contract with him regarding proof of the Holocaust gassing.

Mermelstein was the first to apply for the $50,000 reward, offered originally at the "First

Revisionist Convention" held in the summer of 1979. . . .

Contest rules included these conditions:

-Claimants were to attend at their own expense the "Second Revisionist Convention" . . . where they were to present evidence. . . .

-A tribunal of experts, picked up by the IHR, was to determine the validity of the testimony and evidence presented.

-Claimants were asked to give their "ethnic origin" and answer questions such as, "Were you an eyewitness to the gassing operations?" and "Did you keep a dairy [sic] or take photos?"

Mermelstein was not the reward's only claimant.

Famed Nazi-hunter Simon Wiesenthal, the Austrian credited with tracking scores of Nazi war criminals since World War II, applied in January of 1981.

McCalden, apparently wanting to achieve greater publicity for the IHR by taking on Wiesenthal, wrote Mermelstein's attorney that he would deal with Mermelstein's claim after the institute had decided Wiesenthal's. But Wiesenthal, convinced that the judges chosen by the IHR would be biased, on March 4 wrote "Brandon" that he was withdrawing.

Meanwhile, Mermelstein, claiming that he had submitted required

proof that Jews had been gassed, had already sued.

* * *

In a letter dated April 16, 1981, to subscribers to the Journal of Historical Review, Brandon said the $50,000 reward was "our No. 1 gimmick" to obtain publicity for institute activities.

"No one pretended that the reward was an academic exercise, . . . but at least it could attract attention to our genuine academic exercises. . . . All we needed was some naive zealot to walk into our trap. And even though we had to artificially extend the duration of the reward in the process, we did eventually attract the most emi-

nently suitable mouse into our richly baited trap!"

The "mouse" was an apparent reference to Nazi-hunter Wiesenthal.

In the previous Revisionist Newsletter, however, "Brandon" asserted: "Should we lose this case (the Mermelstein suit) the Institute . . . is finished. Make no mistake about that." He also pleaded for subscribers to contribute money for legal defense.

Chandler, . "'Debunkers' of Holocaust Linked to Right-Wing Extremists," Los Angeles Times, Sunday, May 3, 1981, at Part 1, pp. 3, 19, 20.

Carto was a founder of the Institute for Historical Review (IHR). "Auschwitz Survivor Suing For $50,000

Prize in Dispute on Nazis' Gassing," New York Times, March 11, 1981.

> The racism of the most visible Carto organizations is masked by an apparent respectability. Nowhere has Carto sought that respectability more than in the Institute for Historical Review . . . . The institute is described in its publications as "a non-profit educational foundation" established in 1978 "to investigate the positive causes and nature of war, and to disseminate those findings." Achieving white Anglo-Saxon supremacy is, for Willis Carto a "positive" cause of war. In the meantime, as a fund-raising bulletin issued by the Institute says, "the main focus" of the organization's

research and education program has been the debunking of the so-called "Holocaust" which this bulletin alleges "is continually vaunted as the main 'reason' for America's dog-like devotion to the illegal state of Israel.

* * *

In fact, Willis Carto has goals more far-reaching than propaganda and persuasion. The institute is but one arm of an organized, nationwide campaign of anti-Semitism and racism that has as its ultimate objective domination by a pure "Aryan" race of all North America and Europe under the leadership of Willis Allison Carto."

In this campaign, the plaintiff, Melvin Mermelstein, was selected as a specific target precisely because he was a survivor of the Holocaust and of the Nazi death camp at Auschwitz. In choosing him, the institute attacked a man who was extraordinarily vulnerable to anti-Semitism and, particularly, to assertions that he lied in bearing eye-witness testimony to the unspeakable cruelties of the Holocaust -cruelties that have obsessed him since he saw his mother and sisters driven into the gas chambers at Auschwitz and since he discovered that he alone of his family had escaped Nazi oppression alive.

Whatever right Willis Carto has to lie about the Holocaust, he cannot with impunity turn the lie into a dagger aimed at the heart of a Holocaust victim whose psychological vulnerability was intense and deep.

* * *

If Liberty Lobby is the base of Carto's operations, the Institute for Historical Review and the Legion for the Survival of Freedom are its heart. These are the organizations directly dedicated to clearing Hitler's name and persuading Americans that Francis Parker Yockey was right, and the world wrong, about the Nazi genocide of European Jews.

* * *

That is the message of the institute's Journal of Historical Review and "Revisionist Convention" conducted by the institute each year with the intention of revising history to erase the Holocaust from its pages. It was the message of a "reward" offered by the institute at the 1979 convention: $50,000 to anyone who could prove that Jews were killed in gas chambers at Auschwitz.

* * *

Carto embraced the idea and told McCalden ["Brandon," Director of IHR] the "reward" offer would be announced in a press conference after the 1979 "Revisionist Convention.

* * *

Melvin Mermelstein, "outraged," knew the gates of Hell that waited if Carto could first persuade millions that Hitler's deeds were fiction and could then turn Yockey's fantasy into deeds. Mermelstein wrote letters to the Press-Telegram, a daily newspaper published in Long Beach, California; to Jewish Heritage, a weekly newspaper published in Los Angeles; and to The Jerusalem Post, an internationally circulated English-language daily newspaper published in Israel. All three published Mermelstein's letter. The publication in the Jerusalem Post brought swift responses from Carto's "Liberty" empire employees and associates.

One response, an "Open Letter to a Racist and Exterminationist," was widely circulated to Jews as well as to others. In it, ... a member of the Editorial Advisory Committee of the Journal for Historical Review, accused Mermelstein of "peddling the extermination hoax," and of surviving the Holocaust through "pecuniary stealth" and through collaboration with the Nazis. Since [the author of that letter] . . . Carto and their associates contend in the Journal for Historical Review that no Jews were murdered by the Nazis, it is clear that this letter's infamous lies could only have been contrived to damage Mermelstein's reputation and to inflict the most grievous

personal wounds. Mermelstein separated from his father and brother at Auschwitz at his father's bidding. To suggest that the separation that saved his life was collaboration with the Nazis who killed his mother and sisters, and who almost certainly killed his father and brother, was to strike Mel Mermelstein at the most vulnerable, the most easily penetrated part of his personal armor. It was a sadistic stroke worthy of the first Nazis, the men Willis Carto admires most.

* * *

March 20 - A letter from the institute to William Cox proposed that Mermelstein's evidence be considered at the institute's "Revision-

ist Convention" November 20-23 at the University of California's Lake Arrowhead Conference Center.

March 31 - A letter to the institute from Cox noted that the institute had apparently expanded the proof desired from Mermelstein to include evidence that gassing of Jews was an official policy. The letter also noted that when the summons and complaint were served on March 17 to a person who acknowledged himself to be David McCalden, that person "refused to acknowledge himself to be 'Lewis Brandon.'" The letter added: "I must ascertain with some greater degree of certainty who it is with whom I correspond. . . . If your answer is not filed with the

Superior Court by April 17, 1981, I intend to take action to receive a default judgment on the proceedings."

April 16 - a letter from "Lewis Brandon" to subscribers to the Institute for Historical Review described the $50,000 "reward" offer as "our No. 1 gimmick," and declared further:

The reward was a gimmick to attract publicity; and it was a gimmick that worked! All we needed was some naive zealot to walk into our trap . . . .

* * *

July 13 - an article headlined "Exterminationist refuses Offer" was published in Carto's weekly newspaper, The Spotlight. This

article alleged, falsely, that "Mel Mermelstein, peripatetic holocaust 'witness,' has refused a continuing offer by the Institute for Historical Review (IHR) to consider his claim for the $50,000 reward offered by the institute to the first person who can prove that Jews were gassed in gas chambers at Auschwitz." The article further alleged, falsely, that Mermelstein "launched a publicity blitz under the guise of a $17 million lawsuit."

In fact it was the Institute for Historical Review that had, having pressed Melvin Mermelstein for a quick acceptance of its challenge, then refused to give Mermelstein's application timely consideration.

It was the institute whose director declared that the "reward offer" was a "publicity gimmick." But having engineered a confrontation that was to plunge Mermelstein into deep mental anguish, having aimed the dagger of a lie at his victim's heart, Willis Allison Carto used the most widely circulated of his publications and another lie to twist the dagger.

Melvin Mermelstein resisted. He feels an obligation to resist. The necessity of such resistance is suggested in The Informed Heart, a book in which Dr. Bruno Bettelheim, himself a former Nazi concentration camp prisoner, discusses that experience and the psychology of its perpetrators and victims.

* * *

A "Reward" offer that started as a "publicity gimmick" became a weapon for Willis Carto and a matter of honor for Melvin Mermelstein. The weapon continues to function so long as resolution of this dispute is delayed. While there are delays, Mermelstein is likely to suffer continued depression that will cause continuing damage to his family relationships and to his ability to perform effectively in his business. A swift adjudication of the matters at issue would enable him to resume the peaceful, secure life that was interrupted by the challenge from the Institute for Historical Review.

Mermelstein v. Institute for Historical Review, Declaration of William Cox, supra, 3-4, 11-12, 15-19, 22, 26.

(XXII): "Outraged over whistle blowing by people who had worked for him, Carto turned to lie detector and voice stress tests to ensure loyalty and operational security. Each new employee now must sign that they are willing to take such tests at any time. Refusal constitutes grounds for dismissal."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the following in making the above statement:

"Vandalism and thefts led to the institution of lie detector/polygraph tests." "Power Base for Hard Right, Willis Carto: Liberty Lobby's Unseen

Boss," Washington Post, May 16, 1977 at p.A-3.

> In May 1970 all employees were ordered to take lie detector tests. They were asked if they had stolen money or lists, or had been in contact with the FBI or ADL.

Simonds, supra, at 989.

Robert M. Bartell, Chairman of Liberty Lobby's Board of Policy, stated in a June 11, 1981 interview with reporter Bermant that lie detector and voice stress tests were instituted to insure "loyalty and operational security." He indicated that refusal to take such tests would be grounds for dismissal. Responding to Mr. Bermant's question on how applicants are "screened for employment by Liberty Lobby, Bartell stated:

Because of the nature of our institution, it is important for us to attempt to force out any infiltrator that might come in . . . . And as in every business of this nature there are people who want to know more than they can find out simply by talking or belonging or being involved. Because of this we instituted a polygraph test for all our employees. Everyone who comes to work signs an agreement that they are willing to take the polygraph. In recent years the test has utilized the stress analysis rather than the lie detector machine, and does it play an important part in our organization? Yes, we've caught people stealing from us and selling information

about our organization to other people. There was no question of guilt. It was ascertained and subsequently proven, so it plays an integral part not so much in the standpoint . . . we know the test is embarrassing for some people . . ." I don't have anything to hide or I wouldn't be here" that sort of thing . . ., but when strange and unexplainable things happen and point to a leak or situations that are uncomfortable for us, then we use the voice stress analysis. It's important from that standpoint. It's not the kind of thing where everyone who comes in gets a voice stress test.

Asked if such a test is a condition of employment by Liberty Lobby, Bartell

stated, "yes, it is a condition of employment." And when asked if hiring was subject to the taking of such a test, Bartell reiterated:

> Yes, subject to it . . . . They must agree before they're hired. They understand that. We're depriving them of no rights. If you don't want to take the test, you don't take the test. If you want the job . . . you have to be subject to it.

Then, asked whether a Liberty Lobby employee who subsequently refused to take a lie detector or voice stress test would be fired, Bartell responded:

> I would say the chances are pretty good . . . unless there's a pretty substantive reason why they can't or there's knowledge on our part

there could be no participation on what we're trying to figure out. There are exceptions to the rule, but unless that . . . we have to take the attitude they've got something to hide.

(XXIII): "Liberty Lobby often hires outside consultants to conduct interviews, with Carto watching through a one-way mirror."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied on information supplied by Robert Eringer. [Defendants note that plaintiff's answers to interrogatories admit that three outside consultants have been retained to conduct polygraph exams of employees. Interrogatory Answer 15.]

(XXIV): "The ADL called it a plan to establish a right-wing military dictatorship."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied on information supplied by Irwin Suall of the ADL and the following additional information:

Operation Survival appears to have been an ongoing project of the Liberty Lobby. Liberty Lobby's twentieth anniversary convention occurred in 1975.

> Survival was the topic that occupied two closed sessions of the convention, where the Liberty Lobby's revived 'Operation Survival' policy was presented to the delegates for eventual approval by the 25,000 voting members.

> The 19-page policy statement, a guide to survival of the enfisioned collapse of American society and [sic] pictured looters, rapists and killers terrorizing the countryside.
>
> The manual stressed the need for conservatives to prepare for the Holocaust by now forming "survival groups" that would store weapons, gold and silver and dehydrated foodstuffs.

"Birthday Marked By Liberty Lobby," New York Times, March 9, 1975.

> At its 20th anniversary convention in Torrance in 1975 the Liberty Lobby unveiled its "Operation Survival" policy, a 19-page guide to surviving the envisioned collapse of U.S. society when

> murderers, rapists and looters will swarm throughout the countryside terrorizing all but prepared patriots.
>
> * * *
>
> Disaster is due, they say, because of the rise of international communism, the establishment of the state of Israel and the inter-racial atmosphere of the United States.

Haas, "Liberty Lobby, gun merchant hold seminar," Torrance. California, Daily Breeze, Sunday April 26, 1981, at A-3.

(XXV): "In this scrutiny of Willis Carto and what he represents, five of the characteristics John Roy Carlson said identify inherent or incipient fascism have manifested themselves in greater or lesser degree. They are: a

virulant anti-Semitism to dissolve the social fabric; the pitting of group against group and race against race to weaken national unity; incessant Red-baiting to smoke screen fascist propaganda; super patriotism and a perverted brand of nationalism; and the creation of a 'survivor mentality' to further fragment society. Three other characteristics are also evident in the Carto record; the use of lies and half-truths to win the support of the politically ignorant; adulation of Adolf Hitler; denigration of democracy and agitation for an authoritarian New Order."

Plaintiffs allege this statement to be false and defamatory.

The following documentary excerpts used by defendants indicate that Carto is, in fact, described correctly by the

characteristics Carlson enumerated. Carto,

> buys the Yockey [Nazi] line on the Jews. Simonds, supra, at 981.

> Carto and the Liberty Lobby are latently racist and fascist. Here the evidence was pretty nearly undeniable.

Id., at 987.

> Carto, in a letter to an associate concerning a new tabloid, stated: "I think there should be more stuff in it about the Wall Street jew . . . ." Concerning underground newspaper editors of the left pictured in Time, Carto stated, "[e]ach of them was a particular type of Jew."

Id., at 989.

> Carto is involved in the publication of racist and anti-Zionist literature.

"Power Base for Hard Right, Willis Carto: Liberty Lobby's Unseen Boss," Washington Post, May 16, 1977, at p.A-1.

> The money trees of which Willis Allison Carto is the creator and proprietor constitute a deep but not impenetrable forest, at the center of which is the tangled underbrush of a secret American Nazism.

Mermelstein v. Institute for Historical Review, Declaration of William Cox, supra, at 2.

> The racism of the most visible Carto organizations is masked by an apparent respectability. . . . Achieving white Anglo-Saxon suprem-

> acy is, for Willis Carto, a 'positive' cause of war.

Id., at 3.

> In fact, Willis Carto has goals more far-reaching than propaganda and persuasion. The Institute [i.e. for Historical Review] is but one arm of an organized, nationwide campaign of anti-Semitism and racism that has as its ultimate objective domination by a pure 'Aryan' race of all North America and all Europe under the leadership of Willis Allison Carto.

Id. at 4.

> Yockey, like Carto, declared that Hitler and Germany failed in their historic mission because of the Jews. Yockey suggested, also like Carto, that with a new hero, a

> Hitler reborn, an American majority can be forged to triumph where Hitler failed.

Id., at 9.

> . . . crypto-Nazis of Carto's immediate circle.

Id., at 14."

> the first Nazis, the men Willis Carto admires most.

Id., at 16.

> It is Willis Carto's self-decreed mission to multiply into a majority the number of Americans who share that Hitlerian concern, [of the "niggerfication of America," [(Carto's words)].

Id., at 24-25.

> Willis Carto leads organized anti-Semitism in the United States. His dream is to succeed the Fuehrer as

savior of the 'Aryan race' in America and Europe.

Id., at 25.

The following is taken from 120 Cong. Rec. E. 4841 (daily ed., July 18, 1974) (remarks of Rep. Eilberg):

An outspoken anti-Semite who has professed an abiding admiration for Hitler and Nazi Germany and has been the moving force behind a network of Jew-hating organizations and publications over the years is also the unpublicized force behind "This Is Liberty Lobby," an extremist radio program carried five times a week by some 126 stations around the country.

His name is Willis A. Carto.

* * *

Liberty Lobby was founded as a front for the seamier operations of Carto, among them Liberty and Property, a clearinghouse for keeping informed on anti-Sematic activities; Western Destiny, a magazine which published racist, Nazi-type articles, and Noontide Press, publisher of anti-Semitic, racist, and pro-Nazi books - including "Imperium," by the late Nazi apologist Francis P. Yockey, a book containing a dedication to Adolph Hitler and a laudatory 35-page introduction by Carto himself.

Carto, 47 years old, began to work full time as a professional bigot and organizer in 1954 when he became executive secretary of Liberty and Property. A racist, as

well as an anti-Semite, he complained while working for Liberty and Property, that "only a few Americans are concerned about the inevitable niggerfication of America." His 20-year career includes serving as a director of Congress of Freedom a right-wing, racist organization, and as an organizer for the John Birch Society.

In 1966, Carto took over the venerable American Mercury name and placed it on the masthead of a quarterly devoted largely to anti-Jewish hate and issued in tandem with the semi-monthly Washington Observer Newsletter, similarly laden with unvarnished anti-Semitism.

* * *

In a 1967 U.S. Court of Appeals case brought by Liberty Lobby against columnist Drew Pearson - which Liberty Lobby lost - Judge Warren E. Burger (now Chief Justice of the U.S. Supreme Court) said the organization's activities reveal "overtones of anti-semitism and racism." [See Liberty Lobby, Inc. v. Pearson, 390 F.2d 489, 491 n.7 (1968).]

* * *

In 1971, Liberty Lobby published a 40-page pamphlet, "America First," ostensibly an analysis of Middle East problems.

* * *

[T]he pamphlet is a tirade of hate blaming the Jews not only for

Middle East crises but for the crucifixion of Jesus, the Russian Revolution, and the two world wars. It questions the allegiance of American Jews and suggests that the only Jews who are loyal Americans are those few who are openly pro-Arab.

* * *

Years ago, Carto wrote to a fellow rightist, Norris Holt: "Hitler's defeat was the defeat of Europe. And America . . . . The blame must be laid at the door of the international Jews."

Carto has been associated with "anti-Semitic" and far rightist groups. Schrag, "America's Other Radicals," Harper's, August, 1970, at 44.

"Carto sees his media empire as a means of obtaining political power in order to effectuate his policies of racism." Mermelstein v. Institute for Historical Review, Supplemental Points and Authorities and Argument Regarding Corporate Liability, (dated Aug. 10, 1981), at 15.

Carto is "a self-avowed admirer of Adolf Hitler." Chandler, "'Debunkers' of Holocaust Linked to Right-Wing Extremists," Los Angeles Times, May 3, 1981.

> 'Carto wants a nationalist socialist dictatorship' in the United States, a former Liberty Lobby executive told a reporter.

Id.

"Willis Carto is a known admirer of Adolf Hitler." Brin, "Propagandists

Libel Holocaust at U.C.L.A.," Orange County Jewish Heritage, March 13, 1981.

> [B]ehind the scenes, and often far away (Los Angeles), there is a more elusive figure - with a passion for anonymity who is the real boss of Liberty Lobby . . . . Carto . . . has also maintained significant ties with the demi-world of anti-Semitic propagandists in America.

"Facts," at p. 459, July, 1968, (ADL of B'nai B'rith, vol. 18, no. 2).

Carto has a "vision of a fascist future." Trento and Spear, supra, at 36.

> Through the Noontide Press in Sausalito, California, Carto publishes books which mock the Jews and extol Aryan culture.

Id.

> [T]he real insiders in Carto's apparatus belong to an explicitly Nazi group called the Francis Parker Yockey movement. . . . [T]he Movement amounts to an underground which controls [Carto's] . . . other fronts and whose members flaunt swastikas, sing Nazi songs and quote Nazi slogans

Id.

> Carto tells "his intimates" that "[t]he problems of our civilization . . . are the fault of Jews and Negroes."

Id.

> Carto has taken his philosophy as well as the name of his underground from Francis Parker Yockey . . . patron saint of America's neo-Nazis

> . . . . Carto was strongly influenced by Yockey . . . .

Id. at 37.

> Liberty Lobby is, in actuality, a front for Willis Carto's neo-Nazi activities.

Id., at 39.

Former Liberty Lobby insider Jeremy Horne found the following memorandum by Willis Carto:

> The strangest of all strange things and the most unfair of all unfair things brought on by Jewish control of American politics concerns the alleged recipient of buckets and buckets of hypocritical Jewish concern and sympathy - the American Negro!
>
> Jewish control or so-called Negro-organizations like the NAACP and

> the Urban League is so complete and has been identified so closely yet fraudulently in the public mind with the legitimate aims and aspirations of the American Negro that only a few white Americans realize the truth about the fantastic trickery which brought this about.
>
> Only a few Negroes are genuinely in accord with the troublemaking policies of these two race-mixing organizations. It is a sad, yet significant fact that both of these fraudulent outfits prosper by using the brains of Jews, the money of Jews and duped white Christians and the "front" of raceless mulatto figureheads. But hardly a Negro in the lot!

Id. at 121. Also in Carto's writings:

> Hitler's defeat was the defeat of Europe. And America.
>
> How could we have been so blind? The blame, it seems, must be laid at the door of the international Jews . . . . If Satan himself, with all the superhuman genius and diabolical ingenuity at his command, had tried to create a permanent element of disintegration and force for destruction of the nations, he could have done no better than to invent the Jews.

Id.

> [Carto] has, in Liberty Lobby, the nucleus for the American Reich.

Id.

> To [Carto], the words of Mein Kampf and Imperium seem quite sane. . . .

Id.

(XXVI): "The Spotlight's stock in trade are stories that purport to expose the 'Jew-Zionist' international bankers 'conspiracy against hard-working, blue-collar Americans."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon information supplied by Robert Eringer, borne out by, inter alia, an article in the June 4, 1979 issue of The Spotlight entitled, "Megabankers Control U.S. Economy by Diverting Gas to Israel." The article states:

> [T]he gas shortage choking America and raising our inflation fever has been caused by Israel. This has provided the world-wide cartel with the opportunity not only to gouge

you at the gas pump, but to seize control of the U.S. economy.

Three knowledgeable European energy experts exclusively interviewed at length by The SPOTLIGHT's investigative team in New York City and Washington confirmed unanimously that the U.S. gas crunch has been staged by Israel in cahoots with the multinational corporations which control global energy supplies.

(XXVII): "Not long ago, a free-lance reporter for The Spotlight, J. Michael Dunsmore, told The Investigator that a lead story in the May 21, 1979 issue of Carto's tabloid was a total hoax . . . . The story, written by Dunsmore under the pseudonym 'Tom Waits,' reported that a Spotlight

reporter had travelled to Baden, Austria, for an April 1979 Bilderberg Conference. But Dunsmore now says neither he nor any other reporter for the paper went to Baden and that the reported conversation with a 'Bilderberg official' never took place."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon information supplied by Robert Eringer.

(XXVIII): ". . . Liberty Lobby was fined $11,000 by the Federal Election Commission. The FEC charged that The Spotlight articles expressly advocated the defeat of a clearly indentified candidate (Carter) and that promotion and distribution of the article by Liberty Lobby was illegal under federal

election laws because Liberty Lobby is a non-profit corporation."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the June 4, 1979 issue of The Spotlight which stated, on page 23, "Currently, the FEC [Federal Election Commission] is demanding that The SPOTLIGHT and Liberty Lobby pay an $11,000 fine for the 'no-no' of telling the truth about Jimmy Carter."

(XXIX): "Carto reportedly delivered a speech in which he attempted to emulate Hitler's style and charisma, and joined the audience in singing Hitler's 'Horst Wessel Lied."

Plaintiffs allege this statement to be false and defamatory.

Defendants relied upon the following in making the above statement:

> Horst Wessel Lied" was sung after a buffet supper on January 25, 1969. Carto then gave an anti-Semitic speech to the gathering of Nazi sympathizers.

Simonds, supra, at 986.

> At a party given in his [Carto's] honor by the Francis Parker Yockey Movement, guests wore Nazi insignia, sang the 'Horst Wessel Lied' . . .

Mermelstein v. Institute for Historical Review, Declaration of William Cox, supra, at 11.

> At one NYA [National Youth Alliance] organizational party in honor of Carto, Nazi emblems were openly displayed and Hitler's Horst Wessel was sung by the guests.

120 Cong. Rec. E 4841 (daily ed.), July 18, 1974 (extension of remarks of Rep. Eilberg).

> On January 25, 1969, at a National Youth Alliance Meeting in Monroeville, Pennsylvania, Nazi emblems were displayed and Hitler's "Horst Wessel Lied" was sung. In the words of one observer, "Carto tried to emulate the personal habits that Hitler had become famous for. . . . To his attentive listeners, he was Hitler reincarnated.

Trento & Spear, supra, at 124.

(XXX): "Willis Carto once wrote that he organized Liberty Lobby to clean 'the Augean stables' and re-establish a government 'in consistency with American traditions.' But surely what Willis Carto perceives as 'American traditions'

are not the traditions the late Adlai Stevenson had in mind when he said: 'What can we say for the self-styled patriot who thinks that a Negro, a Jew, a Catholic or a Japanese-American is less an American than he?'"

Plaintiffs allege this statement to be false and defamatory.

Defendants relied, inter alia, upon the following in making the above statement:

> Carto, in a letter to an associate concerning a new tabloid, stated: "I think there should be more stuff in it about the Wall Street jew . . . ." Concerning underground newspaper editors of the left pictured in Time, Carto stated, "[e]ach of them was a particular type of Jew."

Id., at 989.

> Carto is involved in the publication of racist and anti-Zionist literature.

"Power Base for Hard Right, Willis Carto: Liberty Lobby's Unseen Boss," Washington Post, May 16, 1977, at p.A-1.

> The money trees of which Willis Allison Carto is the creator and proprietor constitute a deep but not impenetrable forest, at the center of which is the tangled underbrush of a secret American Nazism.

Mermelstein v. Institute for Historical Review, Declaration of William Cox, at 2.

> The racism of the most visible Carto organizations is masked by an apparent respectability. . . . Achieving white Anglo-Saxon

> supremacy is, for Willis Carto, a 'positive' cause of war.

Id., at 3.

> In fact, Willis Carto has goals more far-reaching than propaganda and persuasion. The Institute [i.e. for Historical Review] is but one arm of an organized, nationwide campaign of anti-Semitism and racism that has as its ultimate objective domination by a pure 'Aryan' race of all North America and all Europe under the leadership of Willis Allison Carto.

Id at 4."

> Under Carto's guidance the American Mercury . . . was turned into a thoroughly scruffy facist [sic] and anti-Semitic magazine . . . .

Id at 7.

> Yockey, like Carto, declared that Hitler and Germany failed in their historic mission because of the Jews. Yockey suggested, also like Carto, that with a new hero, a Hitler reborn, an American majority can be forged to triumph where Hitler failed.

Id., at 9.

> . . . crypto-Nazis of Carto's immediate circle.

Id., at 14."

> the first Nazis, the men Willis Carto admires most.

Id., at 16.

> It is Willis Carto's self-decreed mission to multiply into a majority the number of Americans who share that Hitlerian concern, [of the

"niggerfication of America," (Carto's words)].

Id., at 24-25.

Willis Carto leads organized anti-Semitism in the United States. His dream is to succeed the Fuehrer as savior of the 'Aryan race' in America and Europe.

Id., at 25.

The following is taken from 120 Cong. Rec. E. 4841 (daily ed.), July 18, 1974 (extension of remarks of Rep. Eilberg):

An outspoken anti-Semite who has professed an abiding admiration for Hitler and Nazi Germany and has been the moving force behind a network of Jew-hating organizations and publications over the years is also the unpublicized force behind

"This Is Liberty Lobby," an extremist radio program carried five times a week by some 126 stations around the country.

His name is Willis A. Carto.

* * *

Liberty Lobby was founded as a front for the seamier operations of Carto,among them Liberty and Property, a clearinghouse for keeping informed on anti-Semitic activities; Western Destiny, a magazine which published racist, Nazi-type articles, and Noontide Press, publisher of anti-Semitic, racist, and pro-Nazi books - including "Imperium," by the late Nazi apologist Francis P. Yockey, a book containing a dedication to Adolph

Hitler and a laudatory 35-page introduction by Carto himself.

Carto, 47 years old, began to work full time as a professional bigot and organizer in 1954 when he became executive secretary of Liberty and Property. A racist, as well as an anti-Semite, he complained while working for Liberty and Property, that "only a few Americans are concerned about the inevitable niggerfication of America." His 20-year career includes serving as a director of Congress of Freedom a right-wing, racist organization, and as an organizer for the John Birch Society.

In 1966, Carto took over the venerable American Mercury name and

placed it on the masthead of a quarterly devoted largely to anti-Jewish hate and issued in tandem with the semi-monthly Washington Observer Newsletter, similarly laden with unvarnished anti-Semitism.

* * *

In a 1967 U.S. Court of Appeals case brought by Liberty Lobby against columnist Drew Pearson -- which Liberty Lobby lost -Judge Warren E. 8urger (now Chief Justice of the U.S. Supreme Court) said the organization's activities reveal "overtones of anti-Semitism and racism." [See Liberty Lobby, Inc. v. Pearson, 390 F.2d 489, 491 n.7 (1968).]

* * *

In 1971, Liberty Lobby published a 40-page pamphlet, "America First," ostensibly an analysis of Middle East problems.

* * *

[T]he pamphlet is a tirade of hate blaming the Jews not only for Middle East crises, but for the crucifixion of Jesus, the Russian Revolution, and the two world wars. It questions the allegiance of American Jews and suggests that the only Jews who are loyal Americans are those few who are openly pro-Arab.

* * *

Years ago, Carto wrote to a fellow rightist, Norris Holt: "Hitler's defeat was the defeat of Europe. And America . . . . The

> blame must be laid at the door of the international Jews."
>
> Carto has been associated with "anti-Semitic" and far rightist groups.

Schrag, "America's Other Radicals," Harper's, August, 1970, at 44.

> Carto sees his media empire as a means of obtaining political power in order to effectuate his policies of racism.

Mermelstein v. Institute for Historical Review, Supplemental Points and Authorities and Argument Regarding Corporate Liability (dated Aug. 10, 1981), at 15.

> Carto is "a self-avowed admirer of Adolf Hitler."

Chandler, "'Debunkers' of Holocaust Linked to Right-Wing Extremists," Los Angeles Times, May 3, 1981.

> 'Carto wants a nationalist socialist dictatorship' in the United States, a former Liberty Lobby executive told a reporter.

Id.

> Willis Carto is a known admirer of Adolf Hitler.

Brin, "Propagandists Libel Holocaust at U.C.L.A.," Orange County Jewish Heritage, March 13, 1981.

> [B]ehind the scenes, and often far away (Los Angeles), there is a more elusive figure - with a passion for anonymity who is the real boss of Liberty Lobby . . . . Carto . . . has also maintained significant ties with the demi-world of anti-Semitic propagandists in America.

"Facts," at p. 459, July, 1968, (ADL of B'nai B'rith, vol. 18, no. 2).

Carto has a "vision of a fascist future." Trento and Spear, supra, at 36.

> Through the Noontide Press in Sausalito, California, Carto publishes books which mock the Jews and extol Aryan culture.

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> [T]he real insiders in Carto's apparatus belong to an explicitly Nazi group called the Francis Parker Yockey movement. . . . [T]he Movement amounts to an underground which controls [Carto's] . . . other fronts and whose members flaunt swastikas, sing Nazi songs and quote Nazi slogans.

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could have done no better than to invent the Jews.

Id.

Source Demonstrating that Plaintiffs Should Have Known Since 1969 of the Alleged Theft of the Records Identified in Count II of the Complaint

Carto devised a system for controlling congressmen. Mrs. Sarah Shields Jobe, 77, once a prominent southern attorney, describes the system, which she unwittingly helped construct: "Carto asked me to do some research on a number of congressmen. He asked me to find out what secret organizations they belonged to. He asked me to find out if they were members of the Ku Klux Klan or the White Citizens Council. He called the file 'Kosher Konservative Kongressmen'

-- or the KKK file. I guess he had 52 people in there. As time went on I learned that Carto was a Nazi and what he was using Liberty Lobby for. He was making a concerted effort to take over the conservative element of Congress via blackmail."

Like Jeremy Horne, Mrs. Jobe was a responsible conservative, concerned that Liberty Lobby subscribers were being defrauded. She carted off Carto's files, which have been made available to True.

Trento & Spear, supra, at 122.